

# AGENDA

## A 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, NOVEMBER 9, 2017

*The Board may take action on any item on the agenda,  
and agenda items may be taken out of order.*

- I. CALL TO ORDER
- II. PLEDGE OF ALLEGIANCE
- III. APPROVAL OF MINUTES
  - A. Approval of the Minutes of the Regular Meeting of October 12, 2017
- IV. REPORT ON CLOSED SESSION ITEMS
- V. OTHER COMMUNICATIONS
  - A. For Information
    - 1. September 2017 All Stars
    - 2. Interim Chief Executive Officer's Report  
(Memo dated October 26, 2017)
- VI. PUBLIC COMMENT
- VII. CONSENT AGENDA
  - A. Ratification of Service Retirement and Survivor Benefit Application Approvals.
  - B. Request for an administrative hearing before a referee.  
(Memo dated October 26, 2017)

VII. CONSENT AGENDA (Continued)

- C. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice **Bruce E. Abbott's** appeal of an earlier effective date.  
(Memo dated October 27, 2017)
- D. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice **Jessie M. Hackett's** appeal for service-connected disability retirement.  
(Memo dated October 27, 2017)

VIII. NON-CONSENT AGENDA

- A. Recommendation as submitted by Shawn Kehoe, Joint Organizational Governance Committee Chair: That the Board of Retirement approve the Fiduciary Counsel Policy. (Memo dated October 25, 2017)
- B. Recommendation as submitted by Shawn Kehoe, Joint Organizational Governance Committee Chair: That the Board of Retirement approve the Policy Concerning Employment of LACERA Board Members.  
(Memo dated October 25, 2017)
- C. Recommendation as submitted by William de la Garza, Insurance, Benefits and Legislative Committee Chair: That the Board of Retirement approve the joint engagement of Ackler & Associates and McHugh Koepke & Associates as LACERA's state legislative advocacy services providers.  
(Memo dated October 30, 2017)
- D. Recommendation as submitted by William de la Garza, Insurance, Benefits and Legislative Committee Chair: That the Board provide the following directions to its voting delegate with respect to the 2018 legislative platform of the State Association of County Retirement Systems (SACRS):
  - 1. Vote NO on SACRS sponsorship of "Providing Definition of 'Surviving Spouse' for Eligibility for Survivor Continuances" as proposed by the Ventura County Employees' Retirement Association (VCERA).
  - 2. Vote NO on SACRS sponsorship of "Time Limits of Filing Application for Disability Retirement" as proposed by the Ventura County Employees' Retirement Association (VCERA).

VIII. NON-CONSENT AGENDA (Continued)

3. Vote NO on SACRS sponsorship of “Trustee Authority over Retirement Office Executive Staff” as proposed by the Tulare County Employees Retirement Association (TCERA).

(Memo dated October 12, 2017)

IX. REPORTS

- A. For Information Only as submitted by Steven P. Rice, Chief Counsel, Update on Work Plans for:
  - (1) Proposal that Chief Counsel Report Jointly to Board of Retirement and Board of Investments, and
  - (2) Proposal that Chief Investment Officer Report to Board of Investments (Memo dated October 23, 2017)
- B. For Information Only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated October 31, 2017)
- C. For Information Only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the 2017 Quarterly Reports of Paid Invoices 3<sup>rd</sup> Quarter-July 1, 2017 to September 30, 2017. (Memo dated October 23, 2017)

X. REPORT ON STAFF ACTION ITEMS

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

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

- A. Applications for Disability
- B. Referee Reports

XIV. EXECUTIVE SESSION

- A. Conference Legal Counsel - Existing Litigation  
(Pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9)
  - 1. United States of America v. Gary Ordog  
Case No. CV 17-1664-FMO (C.D. Cal.)
  - 2. Michael Herek v. Board of Retirement  
Case No. B275808 (Ct.App. Second App. District)  
Case No. BS155097 (L.A. Super. Ct.)
- B. 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. Administrative Appeal of Norma Gonzalez
  - 2. Administrative Appeal of Chelsea Cheung

XV. 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, OCTOBER 12, 2017

PRESENT:       Shawn R. Kehoe, Chair  
  
                  Vivian H. Gray, Vice Chair  
  
                  Marvin Adams  
  
                  Alan Bernstein  
  
                  Anthony Bravo  
  
                  Joseph Kelly  
  
                  David L. Muir (Alternate Retired)  
  
                  Ronald A. Okum  
  
                  Herman Santos

ABSENT:       William de la Garza, Secretary  
  
                  William Pryor (Alternate Member)

STAFF ADVISORS AND PARTICIPANTS

Robert Hill, Interim Chief Executive Officer  
  
James Brekk, Interim Deputy Chief Executive Officer  
  
Steven P. Rice, Chief Counsel  
  
John Popowich, Assistant Executive Officer  
  
Michael Herrera, Senior Staff Counsel

STAFF ADVISORS AND PARTICIPANTS (Continued)

Johanna M. Fontenot, Senior Staff Counsel

Barry W. Lew, Legislative Affairs Officer

Ted Granger, Assistant Financial Officer

John Nogales, Human Resources Director

Francis J. Boyd, Senior Staff Counsel  
Legal Division

Ricki Contreras, Division Manager  
Disability Retirement Services

Tamara Caldwell, Specialist Supervisor  
Disability Retirement Services

Reed Smith LLP  
Harvey L. Leiderman

I. CALL TO ORDER

Chair Kehoe called the meeting to order at 9:06 a.m., in the Board Room of Gateway Plaza.

II. PLEDGE OF ALLEGIANCE

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

III. APPROVAL OF MINUTES

A. Approval of the Minutes of the Regular Meeting of September 6, 2017

Mrs. Gray made a motion, Mr. Muir seconded, to approve the minutes of the regular meeting of September 6, 2017. The motion passed with Mr. Santos abstaining.

#### IV. REPORT ON CLOSED SESSION ITEMS

Steven Rice, Chief Counsel, reported that, in closed session at the September 11, 2017 special joint meeting of the Board of Retirement and Board of Investments, pursuant to Government Code Section 54957, on a motion by Mr. Kehoe, seconded by Mr. Okum, the Board voted unanimously by all members present to: 1) Authorize the Board Chairs to complete discussions and execute an agreement consistent with the terms negotiated by the Chairs with Gregg Rademacher concerning his retirement, 2) Negotiate an employment contract with Robert R. Hill as Interim Chief Executive Officer to be approved by the Boards, and 3) to direct the Joint Organizational Governance Committee to conduct a nationwide search for a new Chief Executive Officer. Mr. Muir and Mr. de la Garza were absent from the September 11, 2017 meeting.

#### V. OTHER COMMUNICATIONS

##### A. For Information

##### 1. August 2017 All Stars

Mr. Brekk announced the eight winners for the month of August: Elsy Gutierrez, Mathew Stramer, Tina Young, Dina Lejano, Annette Cleary, Anna Collay, Mary Ann Valenzuela and Ruby Minjares for the Employee Recognition Program and Tess Marinan for the Webwatcher Program. Vanessa Cruz, Gena Fuller, Remigio Feliciano and Michael Romero were the winners of LACERA's RideShare Program.



## V. OTHER COMMUNICATIONS

### A. For Information

#### 2. Interim Chief Executive Officer's Report (Memo dated October 3, 2017)

Mr. Hill welcomed Board member, Herman Santos, to the Board of Retirement.

Mr. Hill provided a brief discussion on the Interim Chief Executive Officer's Report and announced the following interim assignments: Benefits Manager, Vanessa Gonzalez, Assistant Executive Officer, Bernie Buenaflor, and Deputy Chief Executive Officer, James Brekk.

Mr. Hill provided an update to the Board regarding the Chief Executive Officer search.

## VI. PUBLIC COMMENT

LACERA member, Diane Santiago, addressed the Board regarding her pension.

LACERA member, Glenn Zoppa, addressed the Board regarding his pension.

## VII. CONSENT AGENDA

Mr. Bernstein made a motion, Mr. Adams seconded, to approve the following agenda items. The motion passed unanimously.

- A. Request of Service Retirement and Survivor Benefit Application Approvals
- B. Request for an administrative hearing before a referee  
(Memo dated October, 2, 2017)
- C. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice **Adela C. Campbell's** appeal for a service-connected disability retirement.  
(Memo dated September 27, 2017)

VII. CONSENT AGENDA (Continued)

- D. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice **Esther Mankowski's** appeal for service-connected disability retirement. (Memo dated September 28, 2017)
- E. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board dismiss with prejudice **Donna E. Lopez'** appeal for service-connected disability retirement. (Memo dated September 28, 2017)
- F. Recommendation as submitted by Robert Hill, Interim Chief Executive Officer: That the Board approve attendance of Board members at the Healthcare Information and Management Systems Society Conference & Expo on March 5-9, 2018 in Las Vegas, Nevada and approve reimbursement of all travel costs incurred in accordance with LACERA's Education and Travel Policy. (Memo dated September 20, 2017)  
(Placed on the agenda at the request of Mr. Kehoe)
- G. Recommendation as submitted by Robert Hill, Interim Chief Executive Officer: That the Board approve attendance of Board members at the InfoSecWorld Conference & Expo 2018 on March 19-21, 2018 in Lake Buena Vista, Florida and approve reimbursement of all travel costs incurred in accordance with LACERA's Education and Travel Policy. (Memo dated September 22, 2017)  
(Placed on the agenda that request of Mr. Kehoe)

VIII. NON-CONSENT AGENDA

- A. Recommendation as submitted by William de la Garza, Chair, Insurance, Benefits & Legislative Committee: That the Board adopt an "Oppose" position on ACA 15, which would enact The Protecting Schools and Keeping Pension Promises Act of 2018. (Memo dated September 6, 2017)

Mr. Lew was present and answered questions from the Board.

VIII. NON-CONSENT AGENDA (Continued)

Mrs. Gray made a motion, Mr. Adams seconded, to approve the agenda item. The motion passed unanimously.

- B. Recommendation as submitted by William de la Garza, Chair, Insurance, Benefits & Legislative Committee: That the Board approve the Other Post-Employment Benefits (OPEB) Actuarial Valuation and Audit Policy. (Memo dated September 11, 2017)

Mr. Granger was present and answered questions from the Board.

Mr. Muir made a motion, Mr. Kelly seconded, to approve the agenda item. The motion passed unanimously.

- C. Recommendation as submitted by Vivian H. Gray, Chair, Disability Procedures & Services Committee: That the Board terminate LACERA's Late-Filed Application Policy. (Memo dated September 27, 2017)

Mr. Boyd was present and answered questions from the Board.

Mr. Adams made a motion, Mr. Muir seconded, to approve the agenda item. The motion passed unanimously.

- D. Recommendation as submitted by Ricki Contreras, Division Manager, Disability Retirement Services: That the Board approve reinstatement for physician, Edward Green III, M.D. – Board Certified Orthopedist, to the LACERA Panel of Physicians for the purpose of examining disability retirement applicants. (Memo dated September 28, 2017)

Mr. Boyd and Ms. Contreras were present and answered questions from the

Board.

Mr. Okum made a motion, Mr. Adams seconded, to approve the agenda item. The motion passed unanimously.

VIII. NON-CONSENT AGENDA (Continued)

- E. Recommendation as submitted by Robert Hill, Interim Chief Executive Officer: That the Board review the December 2017 meeting schedule and consider rescheduling the Wednesday, December 6, 2017 meeting. (Memo dated September 26, 2017)

Mr. Okum made a motion, Mrs. Gray seconded, to approve rescheduling the Wednesday, December 6, 2017 meeting to a combined Disability and Administrative meeting on Thursday, December 14, 2017. The motion passed unanimously.

- F. Recommendation as submitted by John Nogales, Director, Human Resources: That the Board 1) Approve compensation for Interim Chief Executive Officer, Robert Hill, including monthly salary of \$21,521 and “L” Item Benefits, excluding the automobile allowance, Mr. Hill will retain his existing LACERA vehicle; 2) Ratify the Employment Agreement with Mr. Hill as Interim Chief Executive Officer. (Memo dated October 2, 2017)

Mr. Nogales and Mr. Steven Rice were present and answered questions

from the Board.

Mr. Muir made a motion, Mr. Okum seconded, to approve the agenda item. The motion passed unanimously.

- G. Recommendation as submitted by John Nogales, Director, Human Resources: That the Board:

- 1. Approve the following new LACERA classification and salary recommendation:

<u>Classification</u>	<u>Salary Schedule</u>
Executive Board Assistant, LACERA (Memo dated October 3, 2017)	100F

Messrs. Nogales, Hill and Rice were present and answered questions from

the Board.

VIII. NON-CONSENT AGENDA (Continued)

Mr. Santos made a motion, Mr. Muir seconded, to include the following minimum requirements to the Job Classifications:

- 1) Graduation from an accredited four-year college or university, or
- 2) Three (3) years' complex and highly responsible secretarial experience at the level of Executive Secretary, LACERA. The motion passed unanimously.

IX. REPORTS

- A. As submitted by Steven P. Rice, Chief Counsel: Report on Work Plan for Proposal that Chief Counsel Report Jointly to Board of Retirement and Board of Investments.  
(Memo dated October 2, 2017)

Mr. Steven Rice and Mr. Leiderman of Reed Smith LLP were present

and answered questions from the Board.

- B. As submitted by Steven P. Rice, Chief Counsel: Report on Work Plan for Proposal that Chief Investment Officer Report to Board of Investments.  
(Memo dated October 2, 2017)

Mr. Steven Rice and Mr. Leiderman of Reed Smith LLP were present

and answered questions from the Board.

The following items were received and filed:

- C. For information only as submitted by Ricki Contreras, Division Manager, Disability Retirement Services, regarding the Application Processing Time Snapshot Reports. (Memo dated September 20, 2017)
- D. For Information only as submitted by Barry Lew, Legislative Affairs Officer, regarding the 2017 Year-End Legislative Report.  
(Memo dated October 2, 2017)

X. REPORT ON STAFF ACTION ITEMS

There was nothing to report.

XI. GOOD OF THE ORDER

(For information purposes only)

The Board welcomed Mr. Herman Santos to the Board of Retirement.

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement

Service-Connected Disability Applications

On a motion by Mr. Kehoe, seconded by Mr. Okum, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
701C*	ROBERT J. TUBBS
702C*	ROBERTO HOLGUIN JR.
703C	JEFFREY R. FLEMING
704C	ANTHONY M. LUCIA
705C*	THOMAS Y. YU
706C	KEVIN P. RASMUSSEN
707C*	ROBERT G. FRAILING
708C	RANDAL J. STOVER

\* Granted SCD – Employer Cannot Accommodate

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

Safety Law Enforcement (Continued)  
Service-Connected Disability Applications

On a motion by Mr. Okum, seconded by Mr. Bernstein, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
709C	TOMAS F. NAVARRETE
710C	DAVID WATERS

XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

General Members

Service-Connected Disability Applications

On a motion by Mrs. Gray seconded by Mr. Adams, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

<u>APPLICATION NO.</u>	<u>NAME</u>
2749B*	LINDA A. FRANKLIN-JONES
2750B *	TRACY S. WIGGINS
2751B**	SONYA T. GORE
2753B*	PATRICIA D. BOULWARE-MILLS
2754B***	EDWIN A. LISTANA

\* Granted SCD – Retroactive

\*\* Granted SCD – Salary Supplemental

\*\*\* Granted SCD – Since Employer Cannot Accommodate



XII. DISABILITY RETIREMENT APPLICATIONS ON CONSENT CALENDAR

General Members (Continued)

Service-Connected Disability Applications

On a motion by Mr. Muir seconded by Mr. Adams, the Board of Retirement approved a service-connected disability retirement for the following named employees who were found to be disabled for the performance of their duties and have met the burden of proof:

APPLICATION NO.

NAME

4360\*

WAYNE T. FELTON

\* Granted NSCD – Retroactive

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

(This Item was handled out of order, after Item XIV.A.)

A. Applications for Disability

APPLICATION NO. & NAME

BOARD ACTION

6974A – JULIE LIONG

Mr. Okum made a motion, Mrs. Gray seconded, to grant a non-service connected disability retirement pursuant to Government Code Sections 31720 and 31724. The motion passed unanimously.

6975A – LA SHELL D. LONG

Mrs. Gray made a motion, Mr. Santos seconded, to find the applicant ineligible for a service disability retirement. The motion passed unanimously.

6976A – EVELYN BATISTE-BRYANT

Mr. Okum made a motion, Mr. Muir seconded, to deny a service connected disability retirement since the employer can accommodate. The motion passed unanimously.

6977A – MALCOLM E. KENNEDY

Mr. Kehoe made a motion, Mrs. Gray seconded, to find the applicant not permanently incapacitated. The motion passed unanimously.

6978A – CORRINE S. PIRIE

Mr. Kehoe made a motion, Mrs. Gray seconded, to grant a service connected disability retirement pursuant to Government Code Sections 31720 and 37124. The motion passed with Mr. Okum voting no.

6979A –UMAR S. AFRIDI

Mrs. Gray made a motion, Mr. Santos seconded, to grant a service connected disability retirement pursuant to Government Code Sections 31720 and 37124. The motion passed unanimously.

XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

A. Applications for Disability (Continued)

APPLICATION NO. & NAME

BOARD ACTION

6980A – DIANE SANTIAGO\*

(Per applicant's request this item was held in open session under Item XII.)

Mr. Bernstein made a motion, Mr. Okum seconded, to grant a non-service connected disability retirement pursuant to Government Code Section 31720.

Mrs. Gray made a substitute motion, Mr. Santos seconded, to return to staff for additional information. The motion passed unanimously.

6981A – FLORY M. DIAZ

This case was pulled from the agenda by the request of staff.

6982A – ANGELINA LOS BANEZ

Mr. Bernstein made a motion, Mr. Okum seconded, to grant a non-service connected disability retirement pursuant to Government Code Section 31720 and 37124. The motion passed unanimously.

6983A – ZAMSUR D. GOMONIT

Mr. Okum made a motion, Mr. Kehoe seconded, to grant a non-service connected disability retirement pursuant to Government Code Section 31720. The motion passed unanimously.

### XIII. DISABILITY RETIREMENT CASES TO BE HELD IN CLOSED SESSION

#### A. Applications for Disability (Continued)

<u>APPLICATION NO. &amp; NAME</u>	<u>BOARD ACTION</u>
6677A – KATHRYN S. NAVE ELLIOTT	Mr. Okum made a motion, Mr. Bernstein seconded, to grant a non-service connected disability retirement pursuant to Government Code Section 31720. The motion passed unanimously.
6700A – FRED L. BEHRENDT	Mr. Kehoe made a motion, Mr. Okum seconded, to return to staff for additional information. The motion passed unanimously.
6907A – ROBERT L. MINER	Mr. Bernstein made a motion, Mr. Kehoe seconded, to find the applicant not permanently incapacitated. The motion passed unanimously.
6630A – SHARON M. DANIEL	Mr. Okum made a motion, Mr. Bernstein seconded to grant a service-connected disability retirement since the employer cannot accommodate pursuant to Government Code Section 31720. The motion passed unanimously.

#### B. Staff Recommendations

1. Recommendation as submitted by JJ Popowich, Assistant Executive Officer: That the Board approve the service provider invoice for Gutierrez, Preciado & House, LLP. (Memo dated September 28, 2017)

Mr. Okum made a motion, Mr. Adams seconded, to approve the agenda item. The motion passed unanimously.

XIV. EXECUTIVE SESSION

(This Item was handled out of order, after Item XII.)

- 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. Administrative Appeal of Glenn T. Zoppa

The Board met in Executive Session pursuant to Paragraph (2) of Subdivision (d) of California Government Code Section 54956.9. The Board voted unanimously 9 – 0 on a motion by Mr. Santos, seconded by Mr. Bernstein to grant the appeal which includes a payment to Mr. Zoppa of \$72,980.29 in after tax dollars that he paid to purchase his ARC.

- B. Conference Legal Counsel - Pending Litigation  
(Pursuant to Paragraph (1) of Subdivision (d) of California Government Code  
Section 54956.9)

1. United States of America v. Gary Ordog  
Case No. CV 17-1664-FMO (C.D. Cal.)

The Board met in Executive Session pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9. There was nothing to report at this time.

2. Sarah Marks v. LACERA  
Case No. BC598957 (L.A. Super.)  
Case No. B281110 (Ct. App. 2<sup>nd</sup> Dist.)

The Board met in Executive Session pursuant to Paragraph (1) of Subdivision (d) of California Government Code Section 54956.9. There was nothing to report at this time.

October 12, 2017

Page 17

## XV. ADJOURNMENT

There being no further business to come before the Board, the meeting was adjourned at 1:20 p.m.

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

1. Disability Retirement Evaluation Report Correction Memo  
(Memo dated October 11, 2017) (Confidential)
2. Disability Retirement Applications Agenda Correction  
(Memo dated October 11, 2017) (Confidential)
3. Panel Physicians Examination Report  
(Memo dated October 11, 2017) (Confidential)
4. Dismiss with Prejudice the appeal Of Adela Campbell Correction Memo  
(Memo dated October 10, 2017) (Confidential)

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WILLIAM DE LA GARZA, SECRETARY

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SHAWN R. KEHOE, CHAIR



October 26, 2017

TO: Each Member  
Board of Retirement  
Board of Investments

FROM: Robert R. Hill   
Interim 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.

**2017 HR Conference: "Putting the Pieces Together"**

Each year, LACERA's Communication team hosts the "HR Conference" for our plan sponsor's human resources professionals. The conference helps continually strengthen our vital partnership with these professionals by providing an opportunity to share information about our benefits and processes, and in return, receive feedback from our partners on areas where we interact regularly.

Over two days, (August 17<sup>th</sup> and October 19<sup>th</sup>), almost 80 HR professionals attended this year's conference. Attendees heard presentations by subject-matter experts on topics including: Outreach services, Retirement plans, Disability retirement and the payment process, Retiree Healthcare, home/hospital visits, and the Benefit Protection Unit.

I would like to recognize Cynthia Martinez, Interim Chief of Communications and her team for coordinating the event, and the subject matter experts from Benefits, Disability Retirement Services, Member Services, and Retiree Healthcare for their efforts.

**LACERA Receives its 15<sup>th</sup> Consecutive Public Pension Standards Award**

We are pleased to report LACERA received the Public Pension Coordinating Council's (PPCC) Public Pension Standards 2017 Award in recognition of meeting professional standards for plan design and administration.

The Public Pension Standards reflect minimum expectations for public retirement systems management and administration, and serve as a benchmark by which all defined benefit public plans should be measured. The five broad areas assessed include: comprehensive benefit program, actuarial valuation process, external financial statement audit, investment policies and performance evaluation, communication of plan description and annual benefits provided.

The PPCC is a coalition of three national associations, National Association of State Retirement Administrators (NASRA), the [National Council on Teacher Retirement](#) (NCTR) and the [National Conference on Public Employee Retirement Systems](#) (NCPERS), representing 500 of the largest pension plans in the United States.

### **Before March Madness – A Spotlight on the Unsung Heroes of DPC**

We refer to the period running from December through the end of March as “March Madness” because retirements tend to increase during this period as members desire to retire in time to be eligible for any April 1<sup>st</sup> cost of living adjustment (COLA) that may be approved. Beginning next month, we will continue our commitment to share statistics for the 2017-2018 March Madness.

The “March Madness” statistics focus on the tremendous work performed by staff in Benefits and Member Services divisions. However, they are not the only division that sees a spike in work during this time period. We wanted to take a moment and recognize our Document Processing Center (DPC), a unit within the Administrative Services Division that consists of four teams: Imaging, Word Processing, Mail Room, and Copy Center.

Whether members fax, mail, or walk into the Member Service Center, their documents are processed by the Imaging unit. The unit categorizes, images, and reviews each document for quality before it is added to a member's record to be routed electronically to the appropriate work group for processing. In FY 2016-17, the Imaging unit scanned more than 800,000 pages of documents and maintained a rigorous quality control process resulting in 99.1% average accuracy rate. Since scanning operations began in 1997, the team has processed 4,076,908 documents consisting of 11,181,313 pages. A total of 3,827,098 documents and 9,635,467 pages have been committed to Member files for use by other LACERA Divisions.

The Word Processing team, originally created to type all benefit related member correspondence, processes and scans incoming checks for electronic deposit, prepares monthly and weekly Board Agenda Packets for mailing to the Departments and new retirees, and scans all incoming member customer service surveys for processing. While most member letters are now automated, the team still processes about 120 member letters each month. The Mail Room and Messenger Service ensures mail comes and goes in a timely and accurate manner. This team processed more than 76,000 incoming pieces of mail and more than 256,000 outgoing pieces of mail in FY 2016-17. Not to be outdone, the DPC's Copy Center is also a vital team within the DPC unit providing copying services for large jobs to divisions throughout LACERA.



## LACERA's KEY BUSINESS METRICS

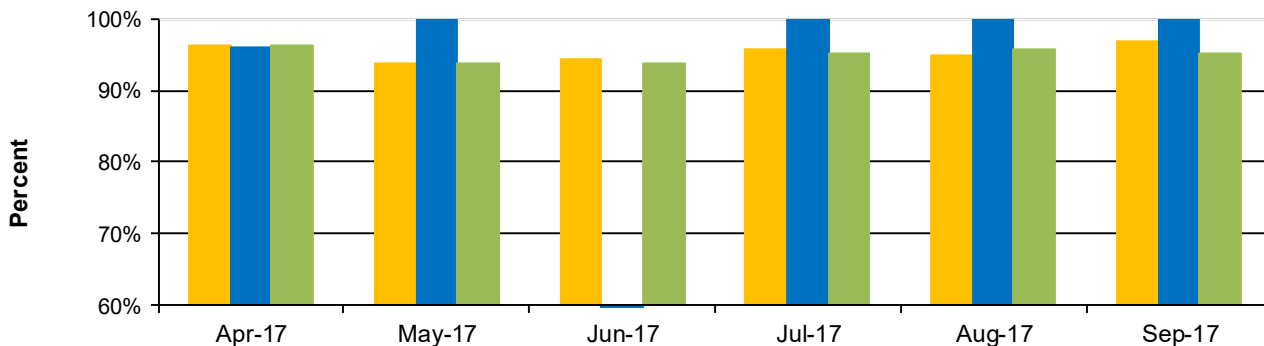
### OUTREACH EVENTS AND ATTENDANCE

Type	# of WORKSHOPS		# of MEMBERS	
	Monthly	YTD	Monthly	YTD
Benefit Information	22	47	1,469	2,333
Mid Career	1	2	16	35
New Member	13	39	365	947
Pre-Retirement	8	22	228	586
General Information	0	1	0	100
Retiree Events	2	2	340	340
Member Service Center	Daily	Daily	1,538	4,344
<b>TOTALS</b>	<b>22</b>	<b>47</b>	<b>1,469</b>	<b>2,333</b>

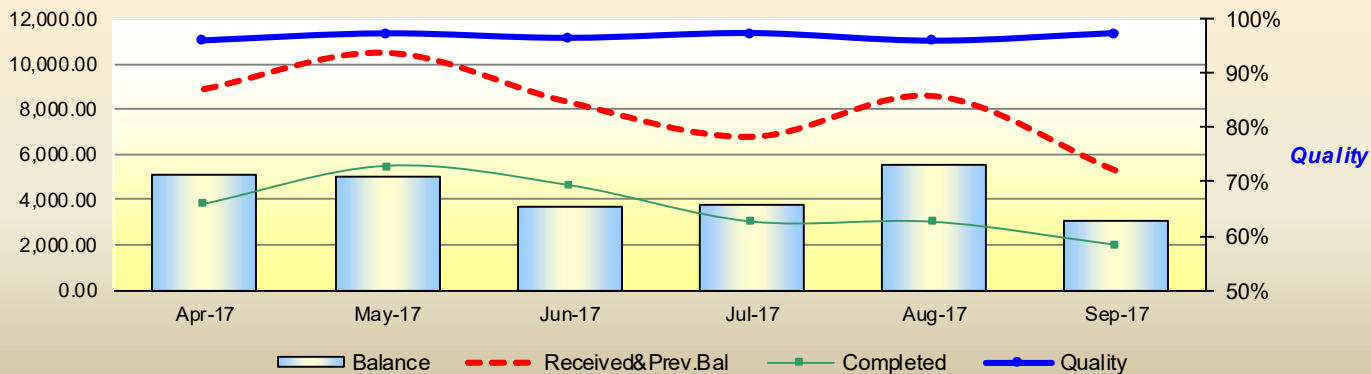
### Outreach Surveys

Note: No Member Service Center surveys were received for June 2017.

■ Call Center  
■ Member Service Center  
■ Workshops



### Benefits and Member Services Production and Quality Summary (Rolling 6 Months)



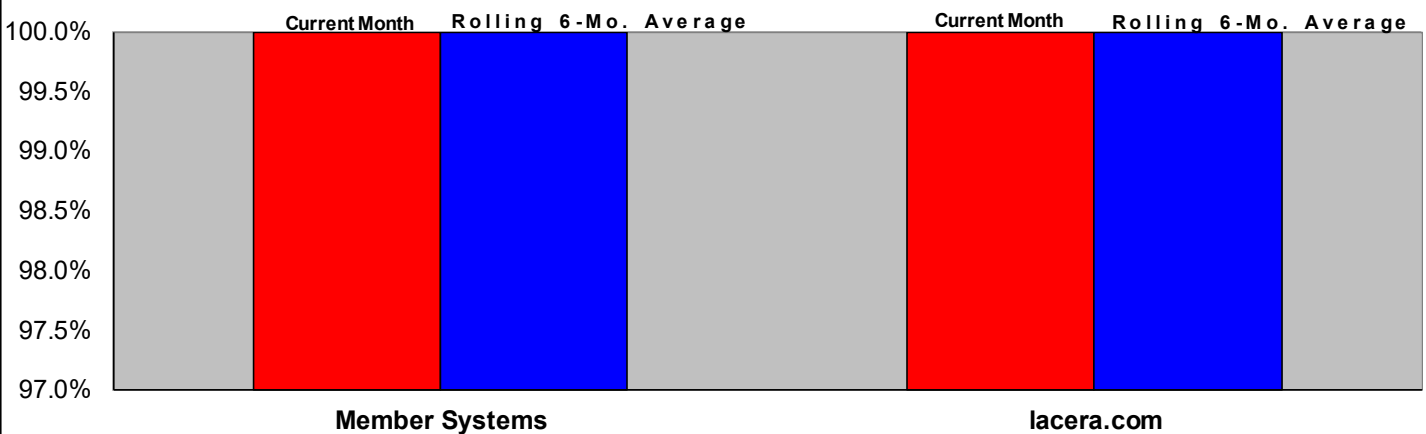
Member Services Contact Center			RHC Call Center	Top Calls
Overall Key Performance Indicator (KPI)		89.93%		
<b>Category</b>	<b>Goal</b>	<b>Rating</b>		<u>Member Services</u>
Call Center Monitoring Score	95%	94.53%	99%	1) Workshop Info/Appointments Inquiry
Grade of Service (80% in 60 seconds)	80%	45%	52%	2) Benefit Pmts. Gen inquiry/Payday Info
Call Center Survey Score	90%	96.99	xxxxx	3) Death Benefit Explanation
Agent Utilization Rate	65%	70%	80%	
Number of Calls		10,568	3,401	<u>Retiree Health Care</u>
Number of Calls Answered		9,086	3,097	1) Medical-New Enroll/Change/Cancel
Number of Calls Abandoned		1,482	304	2) Medical Benefits - General Inquiries
Calls-Average Speed of Answer (hh:mm:ss)		00:02:53	00:02:18	3) General Inquiries (RHC)
Number of Emails		516	119	
Emails-Average Response Time (hh:mm:ss)		05:31:12	(Days) 1	Adjusted for weekends

## LACERA's KEY BUSINESS METRICS

Fiscal Years	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016
Assets-Market Value	\$40.9	\$38.7	\$30.5	\$33.4	\$39.5	\$41.2	\$43.7	\$51.1	\$51.4	\$50.9
Funding Ratio	93.8%	94.5%	88.9%	83.3%	80.6%	76.8%	75.0%	79.5%	83.3%	79.4%
Investment Return	19.1%	-1.4%	-18.2%	11.8%	20.4%	0.3%	12.1%	16.8%	4.3%	1.1%

DISABILITY INVESTIGATIONS						
APPLICATIONS	TOTAL	YTD		APPEALS	TOTAL	YTD
On Hand	595	xxxxxxx		On Hand	124	xxxxxxx
Received	47	148		Received	2	8
Re-opened	0	1		Administratively Closed/Rule 32	4	8
To Board – Initial	25	102		Referee Recommendation	0	2
Closed	1	20		Revised/Reconsidered for Granting	0	1
<b>In Process</b>	<b>616</b>	<b>616</b>		<b>In Process</b>	<b>122</b>	<b>1212</b>

### SYSTEMS AVAILABILITY - SEPTEMBER 2017



Active Members as of 10/26/17		Retired Members/Survivors as of 10/26/17			Retired Members	
		Retirees	Survivors	Total		
General-Plan A	173	18,262	4,611	22,873	Monthly Payroll	267.26 Million
General-Plan B	57	690	66	756	Payroll YTD	0.8 Billion
General-Plan C	68	422	62	484	No. Monthly Added	306
General-Plan D	44,885	13,136	1,234	14,370	Seamless %	99.67%
General-Plan E	19,328	11,878	1,011	12,889	No. YTD Added	8.34
General-Plan G	20,448	8	0	8	Seamless YTD %	99.64%
<b>Total General</b>	<b>84,959</b>	<b>44,396</b>	<b>6,984</b>	<b>51,380</b>	Direct Deposit %	95.00%
Safety-Plan A	7	5,613	1,572	7,185		
Safety-Plan B	10,701	4,885	254	5,139		
Safety-Plan C	2,158	3	0	3		
<b>Total Safety</b>	<b>12,866</b>	<b>10,501</b>	<b>1,826</b>	<b>12,327</b>		
<b>TOTAL ACTIVE</b>	<b>97,825</b>	<b>TOTAL RETIRED</b>	<b>54,987</b>	<b>8,810</b>	<b>63,707</b>	

Health Care Program (YTD Totals)		
	Employer Amount	Member Amount
Medical	118,458,980	10,053,233
Dental	10,558,823	1,091,670
Med Part B	14,073,883	xxxxxxxxxx
<b>Total Amount</b>	<b>\$143,091,686</b>	<b>\$11,144,903</b>

Health Care Program Enrollments (Monthly)	
Medical	48,983
Dental	50,064
Med Part B	32,585
Long Term Care (LTC)	710

Funding Metrics as of 6/30/16	
Employer Normal Cost	9.97%
UAAL	9.73%
Assumed Rate	7.25%
Star Reserve	\$614 million
Total Assets	\$47.8 billion

Member Contributions as of 6/30/16	
Annual Additions	\$458.7 million
% of Payroll	6.65%

Employer Contributions as of 6/30/16	
Annual Addition	\$1,443.1 million
% of Payroll	19.70%

Date	Conference
<b>December, 2017</b>	
4-5	NACD (National Association of Corporate Directors) Advanced Director Professionalism Foundation Course Miami, FL
4-5	9 <sup>th</sup> Annual Private Equity Brazil & Latin America Forum Sao Paulo, Brazil
5-6	2017 SuperReturn Africa Cape Town, South Africa
6-7	International Corporate Governance Network (ICGN) Paris Conference Paris, France
<b>January, 2018</b>	
28-30	NCPERS (National Conference on Public Employee Retirement Systems) Legislative Conference Washington D.C.
<b>February, 2018</b>	
1-2	IMN (Information Management Network) Annual Beneficial Owners' Intl. Securities Finance & Collateral Mgmt. Conference Fort Lauderdale, FL
<b>March, 2018</b>	
3-6	CALAPRS (California Association of Public Retirement Systems) General Assembly Meeting Indian Wells, CA
5-9	Healthcare Information and Management Systems Society Conference & Expo Las Vegas, NV
8-9	PREA (Pension Real Estate Association) Spring Conference Beverly Hills, CA
11-13	2018 Commonfund Forum Orlando, FL
12-14	Council of Institutional Investors (CII) Spring Conference Washington D.C.
14-16	Pacific Pension Institute (PPI) North American Winter Roundtable Washington D.C.
19-21	InfoSecWorld Conference & Expo 2018 Lake Buena Vista, FL
28-30	CALAPRS (California Association of Public Retirement Systems) Advanced Principles of Pension Management for Trustees at UCLA Los Angeles, CA



October 26, 2017

TO: Each Member  
Board of Retirement

FROM: Ricki Contreras, Division Manager  
Disability Retirement Services

SUBJECT: **APPEALS FOR THE BOARD OF RETIREMENT'S MEETING  
OF NOVEMBER 9, 2017**

**IT IS RECOMMENDED** that your Board grant the appeals and requests for administrative hearing received from the following applicants, and direct the Disability Retirement Services Manager to refer each case to a referee:

6972A	Primitiva A. Ulep	In Pro Per	Deny SCD
6970A	Sharon R. Allen	In Pro Per	Deny SCD
6976A	Evelyn Batiste-Bryant	In Pro Per	Deny SCD – Employer Can Accommodate
6907A	Robert L. Miner	In Pro Per	Deny SCD

RC:kw

Memo. New Appeals.docx



October 27, 2017

TO: Each Member  
Board of Retirement

FROM: Ricki Contreras, Manager   
Disability Retirement Services Division

FOR: November 9, 2017 Board of Retirement Meeting

SUBJECT: **DISMISS WITH PREJUDICE THE APPEAL OF BRUCE E. ABBOTT**

Mr. Bruce E. Abbott applied for service-connected disability retirement on February 11, 2013. On June 11, 2015, the Board granted Mr. Abbott's application for service-connected disability retirement.

Mr. Abbott's attorney filed a timely appeal regarding the effective date of his client's service-connected disability retirement. On September 27, 2017, the applicant's attorney advised LACERA that his client did not wish to proceed with his appeal.

**IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:**

Dismiss with prejudice Bruce E. Abbott's appeal for an earlier effective date.

FJB: RC:mb

Abbott, Bruce E.doc

Attachment

NOTED AND REVIEWED:



---

Francis J. Boyd, Sr. Staff Counsel

Date: 10/27/17



October 27, 2017

TO: Each Member  
Board of Retirement

FROM: Ricki Contreras, Manager   
Disability Retirement Services Division

FOR: November 9, 2017 Board of Retirement Meeting

SUBJECT: **DISMISS WITH PREJUDICE THE APPEAL OF JESSIE M. HACKETT**

Ms. Jessie M. Hackett applied for service-connected disability retirement on October 21, 2015. On March 3, 2017, the Board denied her application for service-connected disability retirement.

Ms. Jessie M. Hackett filed a timely appeal. On September 25, 2017, Ms. Hackett signed a voluntary withdrawal letter advising LACERA that she does not wish to proceed with her appeal.

**IT IS THEREFORE RECOMMENDED THAT YOUR BOARD:**

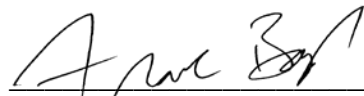
Dismiss with prejudice Jessie M. Hackett's appeal for service-connected disability retirement.

FJB: RC: mb

Hackett, Jessie\_inProPer\_withdrawal.docx

Attachment

NOTED AND REVIEWED:



Francis J. Boyd, Sr. Staff Counsel

Date: 10/27/17

October 25, 2017

TO: Each Member,  
Board of Retirement

Each Member,  
Board of Investments

FROM: Joint Organizational Governance Committee

Shawn R. Kehoe, Chair

David Green, Vice Chair

Vivian Gray

Alan Bernstein

Ronald A. Okum

Wayne Moore

Herman B. Santos

Michael S. Schneider

FOR: November 2, 2017 Board of Investments Meeting  
November 9, 2017 Board of Retirement Meeting

SUBJECT: Fiduciary Counsel Policy

## **RECOMMENDATION**

That the Board of Retirement and Board of Investments (Boards) approve the Fiduciary Counsel Policy.

## **LEGAL AUTHORITY**

As part of their plenary authority and fiduciary responsibility for administration of the system under Article XVI, Section 17 of the California Constitution, the Boards may adopt such policies as they deem prudent in their discretion. Further, under Government Code Section 31529.6, the Boards have the authority to contract with attorneys in private practice for legal services and advice; this authority includes the retention of fiduciary counsel. It is reasonable and prudent for the Boards to establish a policy for the use of fiduciary counsel. Additional information concerning the Boards' authority with respect to fiduciary counsel, including the payment of reasonable compensation as an administrative expense of the system, is set forth in the Legal Authority section of the proposed policy (Section 2).

## **DISCUSSION**

At its October 12, 2017 meeting, the Joint Organizational Governance Committee (JOGC) voted to recommend that the Boards approve the Fiduciary Counsel Policy. The JOGC also provided staff with direction in finalizing the policy for consideration by the Boards. A clean copy of the proposed policy, incorporating the JOGC's input and

the discussion had with the JOGC, is attached to this memo as Attachment A; a redlined copy showing differences from the version originally presented to the JOGC is attached to this memo as Attachment B.

The overall purpose of the policy (Section 1) is to formalize and enhance the role of outside fiduciary counsel in providing advice to the Boards and LACERA staff. Historically, the use of fiduciary counsel has been managed by the Legal Division. Under the proposed policy, the Boards jointly will assume this responsibility. Fiduciary counsel will have increased visibility and availability to the Boards, the Committees, and individual Board Members. The ability of LACERA staff to access fiduciary counsel is preserved, with required reporting to the Boards. The Legal Division will remain a resource to the Boards, Committees, and Board Members; the policy does not change the role or availability of the Legal Division as another resource in providing advice.

The key elements of the proposed policy are:

- **Retention** (Section 3.1). The policy provides that the Boards jointly shall have the power to retain fiduciary counsel. Based on JOGC discussion concerning the duties and privileges of fiduciary counsel, language was added clarifying that fiduciary counsel represents the interests of LACERA with respect to fiduciary issues. The important issues of privilege, confidentiality, and fiduciary counsel's professional responsibilities are discussed in detail later in this memo and in the separate memo regarding privilege attached as Attachment C.
- **Scope of Services** (Section 3.2). The policy describes the categories of services to be provided by fiduciary counsel, as follows:
  - **Meeting Attendance** (Section 3.2.1). The policy provides, based on input from the JOGC, that outside fiduciary counsel selected by the relevant Chair shall attend all meetings of the Board of Investments, the Board of Retirement (Administrative meetings only), the JOGC, and the Audit Committee, unless excused by the relevant Chair. Attendance at the Board of Retirement Disability meetings and other Committee meeting is not required unless requested by the relevant Chair. Fiduciary counsel's presence will enable the Boards and individual Board Members to obtain real-time advice from counsel during meetings.
  - **Advice to Board Members** (Section 3.2.2). The policy provides that outside fiduciary counsel shall provide advice to the Board and Committee



Chairs in setting agendas and performing their responsibilities. There was a great deal of discussion by the JOGC concerning individual Board Member's access to fiduciary counsel. Based on the JOGC's input, the policy provides for unrestricted access of individual Board Members to fiduciary counsel with regard to LACERA fiduciary issues. Without limiting this right of access, the policy further provides that Board Members should be mindful of costs and issues of attorney-client privilege and confidentiality when seeking the advice of outside counsel. Privilege, confidentiality, and professional responsibility are discussed further below (Sections 3.3 and 3.4). The in-house Legal Division remains available as well for Board Member questions, as in the past.

- **Consultation with Staff** (Section 3.2.3). The policy provides that LACERA staff may seek advice from outside fiduciary counsel. As the request of the JOGC, the policy provides that the Board Chairs will be copied on written communications. In addition, monthly written reports of written and verbal staff contacts will be submitted to the Boards. This provision of the policy will enable staff to continue to have access to fiduciary counsel, while providing the Boards with the information they need to perform their monitoring role over fiduciary counsel.
- **Other Projects** (Section 3.2.4). Outside fiduciary counsel will also be available to perform other work as requested by the Boards.
- **Privilege, Confidentiality, and Professional Responsibility** (Sections 3.3 and 3.4). It is very important that the Board Members fully understand the privilege, confidentiality, and professional responsibility issues relevant to fiduciary counsel. The JOGC discussed these issues at length. The JOGC requested that Board Members be provided a separate memo discussing privilege and joint representation, which is attached as Attachment C. Key points are discussed below.
  - Fiduciary counsel's client is LACERA, not individual Board Members. Fiduciary counsel owes a duty to LACERA, not individual Board Members. The Boards jointly control the attorney-client privilege as LACERA's highest authorities. The privilege may be waived only by joint action of the Boards. When individual Board Members and LACERA staff contact fiduciary counsel, fiduciary counsel may disclose the communication to other Members and the Boards. When one Board or Committee

communicates with fiduciary counsel, fiduciary counsel may disclose that communication to the other Board and Committees, subject to the Brown Act with respect to closed session matters. Accordingly, individual Board Members and LACERA staff and the separate Boards and Committees should assume, in speaking with fiduciary counsel, that the information may be shared with both Boards and all Board Members. This rule does not mean that fiduciary counsel will necessarily report all individual communications to both Boards, but it is important for Board Members and LACERA staff to understand that disclosure may be made to the Boards. Counsel will not share information provided by the individual Board Members, the Boards, and LACERA staff with third parties; counsel will assert that such communications are privileged as to the rest of the world, although there may be exceptions and limitations that apply in certain cases. Communications between Board Members and LACERA staff, on the one hand, and fiduciary counsel, on the other hand, should be maintained as confidential unless and until the Boards jointly determine otherwise, and should not be disclosed to persons outside LACERA without joint Board authority. In representing LACERA, fiduciary counsel is bound by the California Bar's Rules of Professional Conduct.

- ***Oversight and Evaluation*** (Sections 3.5 and 3.6). The JOGC discussed, and the policy provides, that the relationship with outside fiduciary counsel shall be overseen by the Boards jointly, subject to recommendations from the JOGC. The Board Chairs will manage the relationship day-to-day. If a matter concerns a Board Chair, the Vice Chair will manage the work, subject to Board oversight. If a matter concerns a Board Chair and Vice Chair, fiduciary counsel will be overseen as determined by majority vote of the Board or Boards, depending on the circumstances, with the Board Chair and Vice Chair not included in the quorum count and vote. Fiduciary counsel will be evaluated annually, with the evaluation process to be overseen by the JOGC.
- ***Definition of "Fiduciary Issues"*** (Section 4). Fiduciary counsel's scope of services to the Boards, Committees, individual Board Members, and LACERA staff is to address fiduciary issues. Section 4 of the policy provides a definition of "fiduciary issues." The term is very broad and includes all matters as to which advice may be required in performance of LACERA's fiduciary duties. Fiduciary duties apply to all actions of the Boards, Committees, individual Board Members, and LACERA staff in the course of performing their work for LACERA. To

provide some guidance on the types of fiduciary issues on which fiduciary counsel may be consulted, Section 4 provides a list of examples, on an “including but not limited to” basis.

- **Scope** (Section 5). The policy applies to all matters relating to fiduciary issues. Section 5 also clarifies that the policy does not limit the ability of one or both Boards to hire separate fiduciary counsel to represent their separate interests, and not LACERA as a whole, in the event of a conflict of interest or other special project where the fiduciary interests may be different or unique.

In drafting the proposed policy, staff considered the fiduciary counsel policies of other public pension systems in California and across the nation.

The proposed policy and the attached privilege memo have been developed in close collaboration with fiduciary counsel Harvey Leiderman, of Reed Smith LLP, and incorporate his comments and input. Mr. Leiderman concurs with this memo (with the exception of the paragraph below on the RFP process, as to which he played no role) and the attached privilege memo, and he recommends the policy.

As an additional matter, the Boards should be aware that the current Board-approved fiduciary counsel are: Reed Smith LLP; Nossaman LLP; and Olson Hagel & Fishburn LLP. These three firms were selected by the Boards in October 2015 following a Request for Proposals (RFP) process in which several Board members participated. Given the increased Board advisory role and visibility of fiduciary counsel under the proposed policy, staff reviewed the current engagement letters with the current fiduciary counsel firms and consider whether to recommend to the Boards that a new RFP be issued to (1) confirm that current counsel satisfy the Boards’ expectations and needs, and (2) revisit pricing terms in light of the increased usage. Staff is satisfied with expertise, skills, and client relations of the current panel, which includes three leading public retirement fiduciary counsel firms in California. However, staff agrees that pricing should be revisited, which will be done informally with the fiduciary counsel firms without the need for an RFP at this time. Staff recommends that a new RFP be issued no later than 2020, which will be the fifth anniversary of the last RFP. However, as noted above, under the proposed policy, the JOGC will manage the selection process. The JOGC can, at any time, recommend that the Boards approve an RFP at an earlier date. Retention of fiduciary counsel will be agendaized for review by the JOGC in 2018.

///

Each Member, Board of Retirement and Board of Investments  
Re: Fiduciary Counsel Policy  
October 25, 2017  
Page 6

## **CONCLUSION**

Based on the foregoing discussion, the JOGC recommends that the Boards approve the Fiduciary Counsel Policy.

### Attachments

c: Robert Hill  
James Brekk  
John Popowich  
Bernie Buenaflor  
Harvey Leiderman  
Richard Bendall  
Fern Billingsy  
Frank Boyd  
Johanna Fontenot  
Michael Herrera  
Christine Roseland

**ATTACHMENT A**  
**PROPOSED FIDUCIARY COUNSEL POLICY**

## **FIDUCIARY COUNSEL POLICY**

### **1. PURPOSE**

This policy confirms the role of outside fiduciary counsel and parameters for use of fiduciary counsel by LACERA and its Board of Retirement and Board of Investments (each, a Board), Board Committees, individual Board Members, and LACERA staff.

### **2. LEGAL AUTHORITY**

Under Article XVI, Section 17 of the California Constitution, the Boards have “sole and exclusive responsibility to administer” LACERA. Under Government Code Section 31529.6, the Boards “may contract with attorneys in private practice for legal services and advice. The boards shall pay reasonable compensation for the legal services and advice. The compensation shall be considered a cost of administration of the system.” Under this authority, the Boards may engage outside fiduciary counsel to provide assistance in the exercise of fiduciary duties by LACERA and the Boards. The Boards, collectively and as individual Board Members, must satisfy their fiduciary duties in all matters they consider, all decisions they make, and all aspects of their conduct on behalf of LACERA.

### **3. POLICY STATEMENT**

**3.1 *Retention.*** The Boards acting jointly shall retain one or more outside fiduciary counsel to represent the interests of LACERA and provide advice to the Boards and LACERA staff in connection with fiduciary issues under the terms of this policy.

**3.2 *Scope of Services.*** The services provided by outside fiduciary counsel shall include:

**3.2.1 *Meeting Attendance.*** An outside fiduciary counsel, selected by the Chair of each respective Board, the Joint Organizational Governance Committee (JOGC), or the Audit Committee from the list of Board approved and retained counsel, shall, unless excused by the respective Chair, attend each Board of Retirement Administrative meeting, each Board of Investments meeting, and each meeting of the JOGC and Audit Committee to provide advice concerning fiduciary issues. Attendance of outside fiduciary counsel is not required at Board of Retirement Disability meetings or at meetings of other Board Committees unless requested by the Chair of the respective Board or Committee.

**3.2.2 *Advice to the Board Chairs and Other Board Members Outside Noticed Meetings.*** Outside fiduciary counsel shall provide such

advice concerning fiduciary issues as may be requested by the Chairs and officers of the Boards or any Committee in the setting of Board and Committee agendas and in fulfilling their duties and responsibilities. Outside fiduciary counsel shall also, without limitation, provide advice in connection with fiduciary issues to any individual Board Member who requests it. Board Members are encouraged to seek counsel from LACERA's Chief Counsel or from outside fiduciary counsel on any fiduciary issues that may arise; however, without limiting the right of individual Board Members to contact outside fiduciary counsel, individual Board Members should be mindful of costs and issues of the attorney-client privilege and confidentiality (as outlined in Sections 3.3 and 3.4 of this policy) in determining whether to seek advice from outside fiduciary counsel on a given issue. Board Members are encouraged to discuss any questions regarding privilege and confidentiality with outside fiduciary counsel before beginning a substantive discussion or requesting specific advice.

**3.2.3 Consultation with Staff.** LACERA's Chief Executive Officer (CEO) and Chief Counsel, or their designees, may seek advice on fiduciary issues from outside fiduciary counsel. The Chairs shall be copied on staff's written communications, and promptly advised of staff's oral communications, with fiduciary counsel. Chief Counsel, in coordination with the CEO, shall provide the Board Chairs with a privileged monthly written report of staff written and verbal contacts, which shall also be copied to all Board Members.

**3.2.4 Other Projects.** Outside fiduciary counsel shall be available to perform any other work concerning fiduciary issues as may be requested from time to time by the Boards.

**3.3 *Privilege and the Confidentiality of Communications.*** LACERA is the client for which outside fiduciary counsel provides services. The Boards jointly are the highest authorities within LACERA overseeing outside fiduciary counsel. The confidentiality of communications between LACERA, acting by and through the Boards, and outside fiduciary counsel is subject to the attorney-client privilege under applicable California law, including the California Bar's Rules of Professional Conduct for attorneys. The Boards jointly control the attorney-client privilege, which may not be waived except by joint action of both Boards. Communications with and information disclosed to or by fiduciary counsel during proceedings of one Board or Committee are subject to disclosure to all Boards and Committees, subject to the requirements of the Brown Act with respect to

disclosures in closed session. Communications between any individual member of the Board or LACERA staff and outside fiduciary counsel are subject to disclosure to the Boards and other Board Members. Outside fiduciary counsel does not have an attorney-client relationship with individual Board Members or with LACERA staff.

Communications between Board Members and LACERA staff, on the one hand, and outside fiduciary counsel, on the other hand, about the business of LACERA, should be maintained as confidential as to third parties, unless and until the Boards jointly determine otherwise. In order to avoid waiver of the attorney-client privilege, individual Board Members and LACERA staff shall not disclose communications with outside fiduciary counsel to persons outside LACERA without the authority of both Boards, or their designated representatives.

**3.4 Professional Responsibilities.** In representing LACERA, outside fiduciary counsel shall have such duties and responsibilities as are set forth in the California Rules of Professional Conduct.

**3.5 Oversight.** LACERA's relationship with outside fiduciary counsel shall be managed by the Board Chairs, subject to the Scope of Services described above, with the Boards jointly having ultimate oversight. In the event advice is required from outside fiduciary counsel on a matter concerning a Board Chair, the Vice Chair of each respective Board shall manage such work. In the event a matter concerns both a Board Chair and Vice Chair, fiduciary counsel shall be overseen on such matter as determined by a majority vote of a quorum of the Board or Boards, with the Board Chairs and Vice Chairs excluded from the quorum count and vote.

**3.6 Evaluation.** The Boards shall evaluate outside fiduciary counsel annually. The JOGC shall oversee the evaluation process. Counsel may provide a self-evaluation in the process.

#### **4. DEFINITION OF "FIDUCIARY ISSUES"**

For purposes of this policy, "fiduciary issues" is defined to include all issues as to which the Boards, the JOGC, the Audit Committee, other Board Committees, individual Board Members, and LACERA staff may seek advice from independent counsel in the performance of their fiduciary duties, including but not limited to:

4.1 Fiduciary duties under the California Constitution, the County Employees Retirement Law of 1937, the California Public Employees' Pension Reform Act of 2013, and other applicable law.



- 4.2 Ethical issues, under LACERA's Code of Ethical Conduct, the Political Reform Act, California Government Code Section 1090 and other provisions of the California Government Code, Fair Political Practices Commission (FPPC) Regulations, FPPC and California Attorney General Opinions, and other applicable laws and LACERA policy relating to conflicts of interest and ethics of Board Members, LACERA staff, and/or LACERA vendors.
- 4.3 Board governance.
- 4.4 LACERA's organizational structure.
- 4.5 Disputes by and between Board Members.
- 4.6 Negotiation and drafting of contracts.
- 4.7 Actuarial and financial matters.
- 4.8 Employment-related matters.
- 4.9 Benefit-related matters, including service retirement, disability retirement, retiree healthcare benefits, and other benefit issues.
- 4.10 Investment-related matters.
- 4.11 Investigations.

## **5. SCOPE**

This policy applies broadly to all matters that may be addressed by the Boards, Board Committees, individual Board Members, or LACERA staff with outside fiduciary counsel concerning fiduciary issues. This policy does not limit the ability of one or both of the Boards, in the exercise of their plenary authority to administer the retirement system, to engage separate outside fiduciary counsel to represent their interests as a Board or Boards in the event of a conflict of interest or in connection with special projects relating to fiduciary issues.

Adopted by the Board of Retirement: November \_\_, 2017

Adopted by the Board of Investments: November \_\_, 2017

**ATTACHMENT B**  
**REDLINED FIDUCIARY COUNSEL POLICY**

## FIDUCIARY COUNSEL POLICY

### 1. PURPOSE

This policy confirms the role of outside fiduciary counsel and parameters for use of fiduciary counsel by ~~LACERA's~~LACERA and its Board of Retirement ~~or~~and Board of Investments (each, a Board), ~~the Joint Organizational Governance Committee (JOGC), the Audit Committee~~Board Committees, individual Board Members, and LACERA staff.

### 2. LEGAL AUTHORITY

Under Article XVI, Section 17 of the California Constitution, the Boards have “sole and exclusive responsibility to administer” LACERA. Under Government Code Section 31529.6, the Boards “may contract with attorneys in private practice for legal services and advice. The boards shall pay reasonable compensation for the legal services and advice. The compensation shall be considered a cost of administration of the system.” Under this authority, the Boards may engage outside fiduciary counsel to provide assistance in the exercise of ~~their~~ fiduciary duties ~~by LACERA and the Boards.~~ The Boards, collectively and as individual Board ~~members~~Members, must satisfy their fiduciary duties in all matters they consider, all decisions they make, and all aspects of their conduct on behalf of LACERA.

### 3. POLICY STATEMENT

**3.1 *Retention.*** The Boards acting jointly shall retain one or more outside fiduciary counsel to represent the interests of ~~both Boards~~LACERA and provide ~~such~~ advice ~~as requested to the Boards and LACERA staff~~ in connection with fiduciary issues. ~~Outside fiduciary counsel shall owe duties to LACERA and the Boards under the terms of this policy.~~

**3.2 *Scope of Services.*** The services provided by outside fiduciary counsel shall include:

**3.2.1 *Meeting Attendance.*** An outside fiduciary counsel, selected by the Chair of each respective Board, the Joint Organizational Governance Committee (JOGC), or the Audit Committee from the list of Board approved and retained counsel, shall, unless excused by the respective Chair, attend each Board of Retirement Administrative meeting, each Board of Investments meeting, and each meeting of the JOGC and Audit Committee to provide advice concerning fiduciary issues. Attendance of outside fiduciary counsel is not required at ~~meetings of other Board committees or at the~~ Board of Retirement Disability meetings or at meetings of other Board Committees unless requested by the Chair of the respective Board or Committee.

**3.2.2 Advice to the Board Chairs and Other Board Members Outside Noticed Meetings.** Outside fiduciary counsel shall provide such advice concerning fiduciary issues as may be requested by the Chairs and officers of the Boards, ~~JOGC~~, or ~~Audit~~ any Committee in the setting of Board, ~~JOGC~~, and ~~Audit~~ Committee agendas. and in fulfilling their duties and responsibilities. Outside fiduciary counsel shall also, without limitation, provide advice in connection with fiduciary issues to ~~the Chairs, or other~~ any individual Board Member who requests it. Board Members, ~~under authority granted by a Board, the JOGC, or Audit Committee. Absent authority as set forth in this policy, Board Members, other than the Chairs as described, shall not~~ are encouraged to seek counsel from LACERA's Chief Counsel or from outside fiduciary counsel on any fiduciary issues that may arise; however, without limiting the right of individual Board Members to contact outside fiduciary counsel ~~directly;~~ individual Board members may make requests for outside fiduciary counsel. Members should be mindful of costs and issues of the attorney-client privilege and confidentiality (as outlined in Sections 3.3 and 3.4 of this policy) in determining whether to seek advice to their respective Chair. from outside fiduciary counsel on a given issue. Board Members are encouraged to discuss any questions regarding privilege and confidentiality with outside fiduciary counsel before beginning a substantive discussion or requesting specific advice.

**3.2.3 Consultation with Staff.** LACERA's Chief Executive Officer (CEO) and Chief Counsel, or their designees, may seek advice on fiduciary issues from outside fiduciary counsel. The Chairs shall be copied on staff's written communications, and promptly advised of staff's oral communications, with fiduciary counsel. Chief Counsel, in coordination with the CEO, shall provide the Board Chairs with a privileged ~~quarterly~~ monthly written report of staff written and verbal contacts, which shall also be copied to all Board Members.

**3.2.4 Other Projects.** Outside fiduciary counsel shall be available to perform any other work concerning fiduciary issues as may be requested from time to time by the Boards.

**3.3 Privilege and the Confidentiality of Communications.** LACERA is the client for which outside fiduciary counsel provides services. The Boards jointly are the highest authorities within LACERA overseeing outside fiduciary counsel. The confidentiality of communications between LACERA, acting by and through the Boards, and outside fiduciary counsel

is subject to the attorney-client privilege under applicable California law, including the California Bar's Rules of Professional Conduct for attorneys. The Boards jointly control the attorney-client privilege, which may not be waived except by joint action of both Boards. Communications with and information disclosed to or by fiduciary counsel during proceedings of one Board or Committee are subject to disclosure to all Boards and Committees, subject to the requirements of the Brown Act with respect to disclosures in closed session. Communications between any individual member of the Board or LACERA staff and outside fiduciary counsel are subject to disclosure to the Boards and other Board Members. Outside fiduciary counsel does not have an attorney-client relationship with individual Board Members or with LACERA staff.

Communications between Board Members and LACERA staff, on the one hand, and outside fiduciary counsel, on the other hand, about the business of LACERA, should be maintained as confidential as to third parties, unless and until the Boards jointly determine otherwise. In order to avoid waiver of the attorney-client privilege, individual Board Members and LACERA staff shall not disclose communications with outside fiduciary counsel to persons outside LACERA without the authority of both Boards, or their designated representatives.

**3.4 Professional Responsibilities.** In representing LACERA, outside fiduciary counsel shall have such duties and responsibilities as are set forth in the California Rules of Professional Conduct.

**3.33.5 Oversight.** The Boards' LACERA's relationship with outside fiduciary counsel shall be managed ~~and overseen~~ by the Board Chairs, subject to the Scope of Services described above, with the Boards jointly having ultimate oversight. In the event advice is required from outside fiduciary counsel on a matter concerning a Board Chair, the Vice Chair of each respective Board shall manage ~~and oversee~~ such work. In the event a matter concerns both a Board Chair and Vice Chair, fiduciary counsel shall be overseen on such matter as determined by a majority vote of a quorum of the Board or Boards, with the Board Chairs and Vice Chairs excluded from the quorum count and vote.

**3.46 Evaluation.** Outside The Boards shall evaluate outside fiduciary counsel ~~shall be evaluated~~ annually ~~by the Boards.~~ The JOGC shall oversee the evaluation process. Counsel may provide a self-evaluation in the process.

#### **4. DEFINITION OF "FIDUCIARY ISSUES"**

For purposes of this policy, “fiduciary issues” is defined to include all issues as to which the Boards, the JOGC, ~~or the Audit Committee,~~ other Board Committees, individual Board Members, and LACERA staff may ~~require~~seek advice from independent counsel in the performance of their fiduciary duties, including but not limited to:

- 4.1 Fiduciary duties under the California Constitution, the County Employees Retirement Law of 1937, the California Public Employees’ Pension Reform Act of 2013, and other applicable law.
- 4.2 Ethical issues, under LACERA’s Code of Ethical Conduct, the Political Reform Act, California Government Code Section 1090 and other provisions of the California Government Code, Fair Political Practices Commission (FPPC) Regulations, FPPC and California Attorney General Opinions, and other applicable laws and LACERA policy relating to conflicts of interest and ethics of Board Members, LACERA staff, and/or LACERA vendors.
- 4.3 Board governance.
- 4.4 LACERA’s organizational structure.
- 4.5 Disputes by and between Board ~~members~~Members.
- 4.6 Negotiation and drafting of contracts.
- 4.7 Actuarial and financial matters.
- 4.8 Employment-related matters.
- 4.9 Benefit-related matters, including service retirement, disability retirement, retiree healthcare benefits, and other benefit issues.
- 4.10 ~~Investments~~Investment-related matters.
- 4.11 Investigations.

## 5. SCOPE

This policy applies broadly to all matters that may be addressed by the Boards, ~~the JOGC, the Audit Committee~~Board Committees, individual Board Members, or LACERA ~~and affect, or potentially affect, the performance of staff with outside~~ fiduciary ~~duties.~~counsel concerning fiduciary issues. This policy does not limit the ability of one or both of the Boards, in the exercise of their plenary authority to administer the retirement system, to engage separate outside fiduciary counsel to represent their interests as a Board or Boards in the event of a conflict of interest or in connection with special projects relating to fiduciary issues.

Adopted by the Board of Retirement: November \_\_, 2017

Adopted by the Board of Investments: November \_\_, 2017

ATTACHMENT C  
MEMO RE CONFIDENTIALITY AND  
PRIVILEGE



October 25, 2017

TO: Each Member,  
Board of Retirement

Each Member,  
Board of Investments

FROM: Steven P. Rice *SPR*  
Chief Counsel

FOR: November 2, 2017 Board of Investments Meeting  
November 9, 2017 Board of Retirement Meeting

SUBJECT: Summary of Issues of Confidentiality and Privilege Regarding Outside  
Fiduciary Counsel

At its October 12, 2017 meeting, the JOGC requested that counsel provide a summary of confidentiality and privilege issues relating to the use of outside fiduciary counsel under the proposed Fiduciary Counsel Policy. This memo was jointly developed, and was approved, by the Legal Division and Harvey Leiderman, of Reed Smith LLP, outside fiduciary counsel.

***Who is outside fiduciary counsel's client?***

LACERA.

An organization can only act through its representatives, as controlled by its highest authority. See California Rule of Professional Conduct 3-600(A) (which provides, "In representing an organization, a member shall conform his or her representation to the concept that the client is the organization itself, acting through its highest authorized officer, employee, body, or constituent overseeing the particular engagement.").

In LACERA's case, the Board of Retirement and Board of Investments are LACERA's highest authorities. See Gov't Code § 31520 ("Except as otherwise delegated to the board of investment and except for the statutory duties of the county treasurer, the management of the retirement system is vested in the board of retirement . . . .") The Boards have fiduciary duties to administer the system in furtherance of the organization's objectives. These fiduciary duties are defined in the California Constitution and the County Employees Retirement Law. See, e.g., Cal. Const., art. XVI, § 17 (the Boards "shall have plenary authority and fiduciary responsibility for investment of moneys and administration of the system"); Gov't Code § 31595. Individual Board Members likewise have fiduciary "duties with respect to the system."

Cal. Const., art XVI, § 17(b), (c); Gov't Code § 31595. Accordingly, the fiduciary duties of LACERA, the Boards, and individual Board Members are equal and aligned. Fiduciary counsel advises the Boards, Board Members, and LACERA staff with respect to fiduciary issues to ensure that the organization, and its Boards and Board Members, performs their duties.

***What is the Boards' role with respect to outside fiduciary counsel?***

The Boards jointly are the highest governing authorities in LACERA, and therefore, it is appropriate that the Boards jointly control the relationship with outside fiduciary counsel. Accordingly, under the Fiduciary Counsel Policy, the Boards jointly retain outside fiduciary counsel, oversee the relationship, and evaluate fiduciary counsel.

***Who owns the attorney-client privilege? Who controls it?***

LACERA owns the attorney-client privilege because LACERA is the client. The Boards jointly, as LACERA's highest governing authorities, control the privilege. The privilege can only be waived by the Boards jointly. Therefore, individual Board Members and LACERA staff shall not disclose communications with outside fiduciary counsel to persons outside LACERA without the authority of both Boards, or their designees.

***May communications by one Board or Committee with fiduciary counsel be disclosed to the other Board or Committees?***

Yes. Because LACERA is the client and because the relationship with outside fiduciary counsel is controlled by the Boards jointly, communications by one Board or Committee may be disclosed to the other Board or Committees. Any such disclosure must comply with the Brown Act.

***Do individual Board Members have the right to communicate with outside fiduciary counsel on fiduciary issues? Are such individual communications privileged and confidential? Will communications be disclosed the Boards and other Board Members?***

Under the Fiduciary Counsel Policy, individual Board Members have the right to consult outside fiduciary counsel on LACERA fiduciary issues. The policy requests that individual Board Members consider cost and issues of privilege and confidentiality when doing so. Individual Board Members do not have a separate, personal attorney-client privilege with fiduciary counsel. Therefore, fiduciary counsel may disclose communications with individual Board Members to the Board and other Board

Members. If outside fiduciary counsel comes to believe that the interests of an individual Board Member with whom counsel is communicating are adverse to LACERA, outside fiduciary counsel will remind the individual member of counsel's client (LACERA). The privilege and confidentiality of communications between counsel and an individual Board Member are controlled by the Boards jointly, not by the individual Board Member. Individual Board Members should keep these concepts in mind in deciding whether to communicate with outside fiduciary counsel on an issue and what to tell counsel if they do communicate.

***May LACERA staff consult with outside fiduciary counsel? What rules of confidentiality and privilege apply?***

The basic rules are the same as apply to individual Board Members. LACERA staff may consult with outside fiduciary counsel on fiduciary issues, but individual staff do not have a separate, personal privilege with counsel. Staff communications with fiduciary counsel may be disclosed to the Boards. Under the Fiduciary Counsel Policy, written communications between staff and outside fiduciary counsel shall be copied to the Chairs and the Chairs shall be promptly notified of oral communications; the Boards will also be provided with a monthly report of written and oral communications between outside fiduciary counsel and LACERA staff. The privilege and confidentiality of communications between counsel and LACERA staff are controlled by the Boards jointly, not by the staff member. Staff should keep these concepts in mind in deciding whether to communicate with outside fiduciary counsel on an issue and what to tell counsel if they do communicate.

***What if either or both of the Boards need separate counsel?***

The Fiduciary Counsel Policy provides that either or both of the Boards may separately hire their own fiduciary counsel, representing a Board or the Boards, not LACERA, if the need arises. It is expected this need will arise only in unusual circumstances.

***What if I have additional questions about the relationship with fiduciary counsel?***

If an individual Board Member has questions about the privilege and confidentiality of communications with outside fiduciary counsel, generally or in the context of specific situations or communications, they should be directed to outside fiduciary counsel.

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Each Member, Board of Retirement and Board of Investments  
Re: Issues of Confidentiality and Privilege Regarding Outside Fiduciary Counsel  
October 25, 2017  
Page 4

***Does this Policy prevent me from communicating with LACERA's Chief Counsel and other attorneys in the Legal Division?***

No. Board Members are free and encouraged to communicate with Chief Counsel and other attorneys in the Legal Division as well about the business of LACERA. Legal Division attorneys are also fiduciaries to LACERA, and members of the State Bar of California. The same privilege and confidentiality rules discussed here apply to communications with Legal Division attorneys.

c: Robert Hill  
James Brekk  
John Popowich  
Bernie Buenaflor  
Harvey Leiderman  
Richard Bendall  
Fern Billingsy  
Frank Boyd  
Johanna Fontenot  
Michael Herrera  
Christine Roseland

October 25, 2017

TO: Each Member,  
Board of Retirement

Each Member,  
Board of Investments

FROM: Joint Organizational Governance Committee

Shawn R. Kehoe, Chair

David Green, Vice Chair

Vivian Gray

Alan Bernstein

Ronald A. Okum

Wayne Moore

Herman B. Santos

Michael S. Schneider

FOR: November 2, 2017 Board of Investments Meeting  
November 9, 2017 Board of Retirement Meeting

SUBJECT: Policy Concerning Employment of LACERA Board Members

## **RECOMMENDATION**

That the Board of Retirement and Board of Investments (Boards) approve the Policy Concerning Employment of LACERA Board Members.

## **LEGAL AUTHORITY**

As part of their plenary authority and fiduciary responsibility for administration of the system under Article XVI, Section 17 of the California Constitution, the Boards may adopt such policies as they deem prudent in their discretion. The proposed policy is reasonably within the scope of the Boards' discretion and authority under the Constitution as a means of avoiding conflicts of interest or the appearance of conflicts.

## **DISCUSSION**

At its October 12, 2017 meeting, the Joint Organizational Governance Committee (JOGC) voted to recommend that the Boards approve the Policy Concerning Employment of LACERA Board Members and provided staff with direction in finalizing the policy for consideration by the Boards. A copy of the proposed policy, which includes the JOGC's input, is attached. The proposed policy is a "revolving door" policy that sets a two-year period within which, without exception, former Board Members shall not be considered or hired for "senior LACERA management positions" after leaving the Board. The policy also provides that Board Members shall not be hired or considered for any LACERA position while they are on a Board.

“Senior LACERA management positions” are defined in the policy to include positions of authority and Board influence in the organization, including assistant division managers and above. The proposed policy provides that it does not limit the application of laws and regulations that may affect employment in other LACERA positions under specific circumstances that could arise on a case-by-case basis. This provision is important because there may be reasons under applicable law to preclude a former Board Member from employment in other positions. For example, a Board Member may be involved in creating a new LACERA position prior to leaving the Board, which the Member then applies for shortly after leaving the Board; this scenario, while not addressed in the proposed policy if the position is not a senior LACERA management position, could still implicate conflict of interest laws, such as Government Code Section 1090.

The JOGC selected a two-year exclusionary period in the proposed policy because it is the same period provided in Government Code Section 31528(c). Section 31528(c) establishes a two-year revolving door rule that prohibits advocacy before LACERA on behalf of a third party by former Board Members or a former LACERA administrator. The JOGC directed that a reference to Section 31528(c) be included in the proposed policy.

Revolving door rules are commonly established for individual leaving positions at all levels of government. In addition to Section 31528(c), other examples of such rules in California and across the country include:

- California’s Political Reform Act contains several provisions limiting the post-employment activities of state and local officials. See Cal. Gov’t Code §§ 87440 et seq.
- The federal government has numerous revolving door rules relating to post-employment activities of executive and legislative branch officials. See, e.g., Post-Employment, “Revolving Door,” Laws for Federal Personnel, Congressional Research Service, January 7, 2014, at <https://fas.org/sqp/crs/misc/R42728.pdf>.
- Other state and local governments outside of California have revolving door rules. See, e.g., Revolving Door Prohibitions: Rules Against Legislators Lobbying State Government After They Leave Office, National Conference of State Legislatures, January 18, 2017, at <http://www.ncsl.org/research/ethics/50-state-table-revolving-door-prohibitions.aspx> (50 state survey).

Most of the rules listed above do not address employment with the official’s former agency. However, staff’s view is that it is consistent with best practices for a revolving

door policy to address agency employment as well as advocacy before the agency (which, in LACERA's case, is already covered under Section 31528(c)) in order to more comprehensively address potential post-service conflict of interest issues. For example, California's Political Reform Act provides that local agencies may adopt their own revolving door rules, provided they are no less restrictive than state law provides. Cal. Gov't Code § 87406.3(c). Accordingly, LACERA staff supports the JOGC's recommendation to approve the proposed policy, which fills a gap in existing law under Section 31528(c). The proposed policy will provide a clear rule to guide the Boards, former Board Members, and LACERA staff with respect to the ability of Board Members to seek post-service employment in senior LACERA management positions.

The proposed policy and this memo have been reviewed by outside fiduciary counsel Harvey Leiderman, of Reed Smith LLP, and incorporate his comments.

## **CONCLUSION**

Based on the foregoing discussion, the JOGC recommends that the Boards approve the Policy Concerning Employment of LACERA Board Members.

### Attachment

c: Robert Hill  
James Brekk  
John Popowich  
Bernie Buenaflor  
Harvey Leiderman  
Richard Bendall  
John Nogales  
Fern Billingsy  
Frank Boyd  
Johanna Fontenot  
Michael Herrera  
Christine Roseland

## **POLICY CONCERNING EMPLOYMENT OF LACERA BOARD MEMBERS**

### **1. PURPOSE**

The purpose of this policy is to prevent an actual or the appearance of a conflict of interest, undue influence, favoritism, or other impropriety in the consideration or hiring of present and former Members of LACERA's Board of Retirement or Board of Investments (each, a "Board") for LACERA employment. Adoption of a policy establishing clear standards will enhance the integrity and fairness of LACERA's hiring process.

### **2. LEGAL AUTHORITY**

This policy is adopted pursuant to the Boards' plenary authority over the administration of the system (Cal. Const., art. XVI, sec. 17) to facilitate LACERA's compliance with applicable conflict of interest laws and regulations, and to avoid any adverse appearance that may be associated with the consideration or hiring of present or former Board Members.

This policy adds to, and is consistent in its duration with, the existing revolving door limitations under California Government Code Section 31528(c), which provides that Board Members or an administrator

shall not, for a period of two years after leaving that position, for compensation, act as an agent or attorney for, or otherwise represent, any other person except the county, by making any formal or informal appearance before, or any oral or written communication to, the retirement system, or any officer or employee thereof, if the appearance or communication is made for the purpose of influencing administrative or legislative action, or any action or proceeding involving the issuance, amendment, awarding, or revocation of a permit, license, grant, contract, or sale or purchase of goods or property.

### **3. POLICY STATEMENT**

**3.1 *During Board Service.*** A Board Member shall not, during such person's term of service on the Board of Retirement or Board of Investments, be considered or hired for employment in any LACERA position.

**3.2 *After Board Service.*** Any person who has served as a Member of LACERA's Board of Retirement or Board of Investments shall not, for a period of two years after leaving that position, be considered or hired for employment in a senior LACERA management position.

### **4. DEFINITION**

For purposes of this policy, "senior LACERA management position" means the chief executive officer, deputy chief executive officer, assistant executive officer, chief



investment officer, deputy chief investment officer, principal investment officer, senior investment officer, chief counsel, chief financial officer, chief information security officer, chief technology officer, chief audit executive, and, to the extent not already listed, the manager and the assistant manager of each LACERA division.

**5. SCOPE**

This policy applies to all Members and former Members of LACERA's Board of Retirement or Board of Investments and shall be effective as of and after the date this policy is adopted. This policy is without limitation to application of, and shall be interpreted consistently with, all laws and regulations that may affect or relate to the consideration or hiring of a present or former Board Member for employment in any LACERA position.

Adopted by the Board of Retirement: November \_\_, 2017

Adopted by the Board of Investments: November \_\_, 2017

October 30, 2017

TO: Each Member,  
Board of Retirement

FROM: Insurance, Benefits & Legislative Committee  
William de la Garza, Chair  
Vivian H. Gray, Vice Chair  
Ronald Okum  
Alan Bernstein  
David Muir, Alternate

FOR: November 9, 2017 Board of Retirement Meeting

SUBJECT: Selection of State Legislative Advocacy Services Providers

## **RECOMMENDATION**

That the Board of Retirement approve the joint engagement of Ackler & Associates and McHugh Koepke & Associates as LACERA's state legislative advocacy services providers.

## **LEGAL AUTHORITY**

The Board of Retirement's (Board) oversight of legislative affairs and legislative advocacy on health, benefit, and plan administration issues is within the plenary authority and fiduciary duty of the Board under Article XVI, Section 17 of the California Constitution to administer the plan, giving precedence to the interests of members and their beneficiaries. Board oversight concerning these legislative issues is consistent with the Board's Legislative Policy and Engagement Policy. The Insurance, Benefits & Legislative Committee (Committee) has the initial responsibility to address these issues and make a recommendation to the Board. The Board has the authority to select such vendors as are needed to assist in the performance of its duties.

## **DISCUSSION**

### ***A. Background.***

On May 11, 2017, the Board approved issued of an RFP for state legislative advocacy services. The RFP was authorized based on the Board's recognition that legislative and regulatory action by the state government can have significant impact on the plan and its members. The Board further recognized that engagement of an experienced and knowledgeable state legislative advocate will enable the Board and the Committee to stay informed of state legislation, develop appropriate principles, policies, and procedures reflecting LACERA's desired level of legislative activism, and implement legislative

strategies with respect to specific issues. A state legislative advocate will help LACERA to maintain credibility in Sacramento and make sure that LACERA's voice is heard when needed. A copy of the RFP is attached as Attachment 1.

The RFP response period was originally scheduled to close on June 23, 2017. By that date, LACERA had received two responses. In an effort to attract additional interest, LACERA extended the response period to August 11, 2017. A copy of the extension notice, which emphasizes the core skills required, is attached as Attachment 2. By the extended date, LACERA received no new responses, although the original respondents provided supplemental proposals containing additional information that was helpful.

A five-member staff team consisting of representatives from the Retiree Healthcare Division, Member Services, Benefits, and the Legal Division evaluated the proposals. The evaluation team determined that both respondents were qualified and that both should be presented to the Committee for interviews.

The two finalists were:

1. Ackler & Associates/McHugh Koepke & Associates; and
2. Alston & Bird LLP.

The two finalists were interviewed by the Committee at its September 6, 2017 meeting. Each finalists gave a 10-minute presentation and responded to the Committee's questions. Following the interviews, the Committee deliberated and voted to recommend that the Board approve the joint engagement of Ackler & Associates and McHugh Koepke & Associates.

### ***B. Information About Finalists.***

#### **1. Ackler/McHugh.**

Ackler & Associates is LACERA's current state legislative advocate and has served in that capacity for more than 15 years. The firm's offices are in Sacramento. Joe Ackler, who started his firm in 1989, has represented a broad array of clients, including Amgen, Allergan, the California Correctional Peace Officers Association, Charles Schwab & Co., and Virgin America. Before starting his own firm, Mr. Ackler was head of California state governmental relations for Atlantic Richfield Company (ARCO). In the current proposal, Mr. Ackler proposes to team with the governmental relations firm of McHugh Koepke & Associates, which is also based in Sacramento. The McHugh firm's clients include the California Credit Union League, the Hartford, The National Association of Insurance & Financial Advisors of California, the Pacific Association of Domestic Insurance

Companies, and the Pechanga Tribe of Luiseno Mission Indians. The lead professional, Shari McHugh, has over 16 years of experience in governmental relations and public relations. The McHugh firms brings two other senior professionals, in addition to Ms. McHugh, to assist LACERA if needed. Ackler/McHugh proposes a monthly engagement fee of \$6,250.

Copies of the Ackler/McHugh proposal, supplemental proposal, and PowerPoint presentation are attached as Attachment 3.

The Committee concluded that the purely legislative focus and access of Acker and McHugh, coupled with the creativity shown in combining their resources in their RFP response, made them the better candidate for LACERA's needs. The Committee appreciated Ackler/McHugh's plan to have quarterly meetings with the IBLC and Board to discuss developments, goals, and legislative strategy.

## **2. Alston & Bird.**

Alston & Bird is a national law firm, with offices in Sacramento, Los Angeles, and other places across the country. The firm is well known to LACERA as the vendor that provided the 2016 organizational privacy audit. The project lead for LACERA would be Maureen Gorsen. Ms. Gorsen, who is located in the firm's Sacramento office, previously served as General Counsel of the California Environmental Protection Agency and the California Natural Resources Agency. She has over 24 years of experience in and out of state government. Ms. Gorsen would be assisted by John Kabateck, who is also located in Sacramento. Mr. Kabateck is a Senior Public Policy Consultant with the firm. Also assisting would be Kathleen Hill, who is the firm's registered lobbyist and is located in the firm's Los Angeles office. In addition to these three key team members, Alston offers the assistance of other firm professionals with subject matter expertise, including a benefits partner in the Washington, D.C. office. Alston proposes a monthly engagement fee of \$10,000.

Copies of Alston's proposal and supplemental proposal are attached as Attachment 4.

The Committee appreciated some of the ideas brought forward by the Alston team. However, ultimately, the Committee felt that Alston, as a law firm, had more of a legal focus than is necessary. The Committee was also concerned that several Alston team members were not located in Sacramento. Finally, the Committee noted that Alston's fees were significantly higher than Ackler/McHugh's fees. The Committee preferred Ackler and McHugh, who focus exclusively on governmental relations and public relations and were perceived by the Committee as having broad political reach and access at a reasonable price.

**C. Evaluation Scoring.**

The Committee’s recommendation is consistent with staff’s scoring of the RFP responses. The evaluation team sought to evaluate the candidates on two core skills: first, the skill and experience to assist LACERA with the legislative and regulatory process, including knowledge of the process and the ability to facilitate access to and effective communication with decision-makers; and second, a strong base of substantive knowledge and experience in the issues relevant to LACERA.

To accomplish this result, the finalists were evaluated as follows:

**40% Experience, Approach & Success**

- Experience performing legislative advocacy on state issues
- Substantive knowledge of state issues
- Experience relevant to services requested

**40% Assigned Professionals**

- Professional qualifications
- Samples of written work

**10% Other**

- Conflicts of interest
- Claims
- Insurance
- Other additional information provided

**10% Fees and Costs, Billing Practices, and Payments Terms**

- Fee amount
- Length of contract

Based on this scoring matrix, the evaluation team scored the finalists as follows:

	Max	<b>Ackler/McHugh</b>	<b>Alston &amp; Bird</b>
Experience, Approach, and Success	40	33.73	28.53
Assigned Professionals	40	26.00	29.40
Other	10	8.14	8.43
Fees and Costs, Billing Practices, and Payment Terms	10	7.35	6.35
<b>TOTAL</b>	<b>100</b>	<b>75.22</b>	<b>72.71</b>

**CONCLUSION**

Based on the information provided in this memo and its attachments, the Insurance, Benefits & Legislative Committee recommends that the Board of Retirement approve the joint engagement of Ackler & Associates and McHugh Koepke & Associates as LACERA's state legislative advocacy services providers.

Attachments

- c. Robert Hill  
James Brekk  
John J. Popowich  
Bernie Buenaflor  
Steven P. Rice  
Cassandra Smith  
Leilani Ignacio  
Barry Lew

**ATTACHMENT 1**  
**May 22, 2017 State RFP**

**Los Angeles County Employees Retirement Association  
Request for Proposals for  
State Legislative Advocacy Services Concerning Health, Pension, and  
Plan Administration Issues**

The Los Angeles County Employees Retirement Association (LACERA) invites proposals from experienced state legislative advocates in response to this Request for Proposals (RFP) to provide state legislative advocacy services to LACERA and its Board of Retirement concerning its areas of interest, including but not limited to pension and healthcare benefits, plan administration and governance, and other pension and retirement-related matters.

**I. BACKGROUND**

**A. Organization and Governance**

LACERA is a tax-qualified defined benefit public pension fund established to administer retirement, disability, and death benefits for the employees of the County of Los Angeles and other participating agencies pursuant to the County Employees Retirement Law of 1937 (CERL) (California Government Code Section 31450, et seq.), the California Public Employees' Pension Reform Act of 2013 (PEPRA) (California Government Code Section 7522, et seq.), and other applicable California law. LACERA also administers the County's medical and dental retiree health benefits program. LACERA operates as an independent governmental entity separate and distinct from Los Angeles County and the other participating agencies. LACERA has 165,575 members, including 103,682 active members and 61,893 retired members. 48,671 retired members and survivors participate in the medical and/or dental retiree healthcare program. In addition to benefits administration, the fund invests \$47.85 billion in assets to support payment of the promised pension benefits as well as additional sums to support the retiree healthcare program.

LACERA is governed by two separate boards: a Board of Retirement (Board) with responsibility over administration of pension and healthcare benefits and other fund administrative issues, and a Board of Investments with responsibility over funding of the plan and investment of the fund's portfolio. Each board has nine trustees, comprised of four trustees elected by the general, safety, and retired members, four trustees appointed by the County's Board of Supervisors, and the sitting Treasurer and Tax Collector as an ex officio trustee. The Board of Retirement also has two alternate trustees, one elected by safety members and one elected by retired members. The



boards and their trustees have fiduciary duties as defined in Article XVI, Section 17 of the California Constitution and CERL, with duties owed to the plan members and their beneficiaries taking precedence over any other duties.

This RFP concerns state legislative issues relevant to the Board of Retirement.

The Board engages legislative issues according to the framework set forth in the Board-approved Legislative Policy, a copy of which is attached as Exhibit A. The Board has an Insurance, Benefits & Legislative Committee (IBLC), which serves as an initial screen for legislative business. Past agendas and agenda materials of the Board and the IBLC are available on LACERA.com.

At the staff level, legislative issues are the general responsibility of LACERA's internal Legislative Affairs Officers, who is part of the Legal Division and advises the Board and the IBLC on a monthly basis concerning a wide-variety of legislative issues. Staff in the Retiree Healthcare Division advises the Board and the IBLC monthly regarding health-related legislative issues. In addition, staff throughout the organization, including the Member Services, Benefits, Quality Assurance, and Internal Divisions and the Executive Office, is knowledgeable about and deals on a regular basis with and is affected by legislative issues.

## **B. LACERA's California State Legislative Engagement, and the Rational for this RFP**

LACERA, the Board, and the IBLC have a long history of robust engagement with California state legislative issues affecting CERL, PEPRRA, and other state proposals concerning LACERA's interests. State-level engagement is achieved through Board action guided by LACERA's internal Legislative Affairs Officer, an external state legislative advocate located in Sacramento (the state capital), and other staff.

Examples of LACERA's state legislative engagement include:

- Sponsorship of legislation.
- Monitoring of legislation.
- Communication between staff and the external state legislative advocate.
- Monthly reports by staff to the Board and the IBLC concerning legislative issues.
- Annual Board report by the external legislative advocate.

- Board-approved positions to Support, Oppose, be Neutral, or Watch legislation. Positions are initially presented to the IBLC and then presented to the full Board for final approval. Board action to Support or Oppose will be followed by letters from LACERA's Chief Executive Officer to legislators and the Governor informing them of LACERA's position.
- Leadership positions, including the past president and members of the Legislative Committee and other committees, in the State Association of County Retirement Systems (SACRS), which consists of the 20 California county systems formed, like LACERA, under CERL. Trustees and staff are also frequent speakers on issues at SACRS and other state and national pension organizations, including the California Association of Public Retirement Systems (CALAPRS), the National Conference on Public Employee Retirement Systems (NCPERS), and the National Association of Public Pension Attorneys (NAPPA).
- Periodic staff and executive management trips to Sacramento to meet with LACERA's external legislative advocate, legislators and their staff, or other persons of interest in the capital.

By this RFP, the Board desires to review its existing resources, and equip itself to continue to pursue a high level of state legislative and regulatory engagement when appropriate in the interest of LACERA and its members, through the retention of a state legislative advocate with knowledge and experience with the health and pension benefit and plan administration issues affecting a California public pension system. As explained more fully in the Scope of Services below, LACERA and the Board expect that the state legislative advocate will provide information and reports to staff and the Board about potential and proposed state legislation and regulations, facilitate communication between LACERA, state decision makers, and other groups that may be aligned with LACERA's interests, advise the Board on legislative and regulatory strategies, and implement agreed-upon strategies so that LACERA's voice is heard and may have some influence on state discussion and decision-making.

## **II. SCOPE OF SERVICES**

LACERA seeks to hire an external state legislative advocate (Consultant) to perform the following services with respect to potential, proposed, and actual legislation, regulations, trends, discussion, and debate among decision makers, stakeholders, and other interested parties, relating to health and pension benefit and plan administration issues that may impact LACERA and its active or retired members (State Issues). Examples of State Issues include but are not limited to CERL, PEPR, the Ralph M. Brown Act, the Public Records Act, public pension service retirement benefits, disability retirement

benefits, retiree healthcare benefits, pension reform legislation and initiatives, information and data privacy and protection, fiduciary duties of the Board, pension-related provisions of the California Constitution, public pension plan operations, plan administration and transparency, and the Political Reform Act and other conflicts of interest and ethics legislation and regulations.

- A. Monitoring.** Consultant shall monitor State Issues with all appropriate sources, including members of the Legislature, committees, legislators' and committee staffs, state agencies, and interest groups aligned with or adverse to LACERA's interests. In monitoring, the Consultant shall be aware of relevant time periods associated with legislative or regulatory proposals so that LACERA can be informed and take timely action, if it elects to do so. Consultant shall regularly communicate, verbally and in writing, as appropriate, with LACERA staff on an ongoing basis with respect to relevant matters. Monitoring shall also include an assessment of the impact of a proposal or issue on LACERA and its members.
- B. Bill/Regulation Tracking.** Consultant shall obtain copies of proposed and actual legislation and regulations relating to the State Issues and shall track the progress of such legislation and regulations and other relevant information, including applicable deadlines.
- C. Regular Monthly Bill/Regulation Report to the IBLC; Other Reports.** Consultant shall prepare monthly written reports for the IBLC, in a format to be approved by LACERA, concerning proposed and actual legislation regulations and other activity relevant to the State Issues, including an explanation of the relevance and impact on LACERA and its members. Consultant shall prepare such other written reports as LACERA may request from time to time with respect to State Issues. All such reports shall be delivered in strict adherence to the schedule provided by LACERA so that each report can be included in the Board packet distributed to trustees in advance of their meetings.
- D. Development of Strategy.** Consultant shall work with the Board, the IBLC, and LACERA staff to determine the desired degree of engagement on State Issues and then develop a strategy of legislative advocacy to further LACERA's objectives and interests. Consultant shall assist in the development or revision of internal principles, policies, and procedures relating to LACERA's desired level of activism on legislative issues at the state level.
- E. Communication with the Board, the IBLC, and Staff.** Consultant shall

communicate as needed with LACERA, including at least four personal appearances per year before the Board and the IBLC, so that LACERA is informed and can engage directly with the Consultant regarding State Issues, the implementation of each strategy, and other activities pursued by the Consultant.

- F. Communication with Interested Parties.** Consultant shall communicate as appropriate with all interested parties, including parties supportive of and/or adverse to LACERA's positions, regarding LACERA's strategies and priorities and to learn the strategies and priorities of other parties. Consultant shall consider, when appropriate, coordination of communication and action with LACERA stakeholder groups, including the plan sponsor and member organizations.
- G. Legislative Advocacy.** Consultant shall advocate Board-approved positions on legislation and regulations, including direct personal communications with legislators and regulators, correspondence, meetings, testimony, and reports, to the relevant decision makers. The Consultant shall locate bill sponsors when necessary and manage sponsored legislation through the legislative process. These services shall also include distribution of letters and management of other forms of communication, such as personal meetings, with regard to official positions the Board may take on specific legislation. The Consultant shall use other legislative advocacy strategies as needed.
- H. Establish an Active Presence for LACERA.** Consultant shall conduct itself at all times in a manner and shall take such steps as are appropriate within the approved strategy to raise awareness of LACERA's issues and interests and establish an active, credible presence for LACERA on State Issues with legislators, regulators, and other relevant parties.
- I. Special Projects.** Consultant shall perform special projects, with LACERA's advance written approval, relating to State Issues.

This RFP relates only to California state legislative advocacy services with regard to State Issues as defined. This RFP does not relate to federal legislative advocacy services, which are the subject of a separate RFP issued concurrently. Interested and qualified parties may respond to both RFPs.

### **III. QUALIFICATIONS**

The ideal Consultant should have:

- At least five (5) years highly responsible and accountable experience managing complex State Issues for public entity clients and advocating directly with legislators and regulators in Sacramento on such issues to achieve client objectives.
- An established office in Sacramento.
- Strong substantive knowledge of the State Issues.
- Experience analyzing legislation and developing legislative and regulatory proposals with respect to State Issues.
- Strong understanding of state legislative advocacy and communication strategies.
- Longstanding and positive working relationships with legislators, regulators, their staff, and other parties in connection with legislative advocacy.
- A track record of accomplishment in legislative advocacy on State Issues.
- A proactive approach to the Scope of Work.
- Exceptional writing skills.
- Exceptional interpersonal and presentation skills.
- The ability to work well with and maintain the confidence of the Board, the IBLC, and staff.
- The ability to deliver services in a timely and cost effective manner.
- Sound judgment.
- No professional and/or ethical conflicts, or the appearance of conflicts, with LACERA's interests, and an approach that reflects strong sensitivity to ethical concerns.
- A strong educational and professional background.

#### IV. **RFP PROCESS**

This RFP and other relevant information related to the RFP, including addenda, modifications, answers to questions, and other updates, will be posted on the "RFPs"

page of LACERA.com. Additional background information about LACERA may also be found on LACERA.com.

**A. Calendar**

<b>Issuance of RFP</b>	May 22, 2017
<b>Written Questions and Requests for Clarification Due</b>	June 6, 2017, 5:00 P.M. PDT
<b>Responses to Questions Posted</b>	June 13, 2017
<b>Proposals Due</b>	June 23, 2017, 5:00 P.M. PDT
<b>Estimated Finalist Interviews and Recommendation by the IBLC</b>	July 13, 2017
<b>Estimated Final Selection and Approval by the Board</b>	August 10, 2017

**B. Communication and Questions**

Except for communications expressly permitted by this RFP and except as may be requested by LACERA staff managing the RFP process, communications by respondents with LACERA staff or trustees of its Board of Retirement or Board of Investment regarding this RFP are prohibited from the date of this RFP through the date LACERA completes or terminates the RFP process, as publicly disclosed by LACERA. Respondents violating the communications prohibition may be disqualified in LACERA's discretion. Respondents having current business with LACERA must limit their communications to the subject of such business.

Respondents are encouraged to communicate any questions regarding this RFP by the deadline stated above in the RFP Calendar. Questions should be sent in writing via email to [blew@lacera.com](mailto:blew@lacera.com). Questions and answers will be posted at LACERA.com by the date stated in the RFP Calendar.

**C. Errors in the RFP**

If a respondent discovers an ambiguity, conflict, discrepancy, omission or other error in this RFP, notice should be immediately provided to [blew@lacera.com](mailto:blew@lacera.com). LACERA is not responsible for, and has no liability for or obligation to correct, any errors or omissions in this RFP.

**D. Addenda**

Modifications or clarifications of the RFP, if deemed necessary, will be made by addenda to the RFP and posted on LACERA.com.

**E. Delivery of Submissions**

Submissions must be delivered in PDF or Microsoft Word format via email to [blew@lacera.com](mailto:blew@lacera.com) by the due date stated above in the RFP Calendar. In addition, respondents must send three (3) hard copies of their submissions for delivery by the due date stated in the RFP Calendar addressed to:

LACERA  
Attention: Barry Lew  
Legislative Affairs Officer  
300 North Lake Avenue, Suite 620  
Pasadena, CA 91101

See “Notice Regarding the California Public Records Act and Brown Act” in this RFP for information regarding redactions and disclosure.

**F. Proposal Format and Content**

All responses to this RFP should follow the format described in this Section IV.F. For each part of the response, restate the RFP item immediately above the response. When requested, please provide details and state all qualifications or exceptions. All information provided should be concise and clearly relevant to qualifications to serve as LACERA’s legislative advocate for State Issues.

**1. Cover Letter**

The cover letter must provide a statement affirming that the signatory is empowered and authorized to bind the respondent to an engagement agreement with LACERA and represents and warrants that the information stated in the proposal is accurate and may be relied upon by LACERA in considering, and potentially accepting, the proposal.

**2. Executive Summary**

In this section, an overview should be provided of the respondent’s background, experience, and other qualifications to serve as LACERA’s legislative advocate with respect to State Issues.

### **3. *Experience, Approach, and Success***

The proposal must provide a detailed statement of the respondent's experience and accomplishments in providing legislative advocacy services on State Issues, including, if subject to disclosure, information concerning such work performed for other public pension systems. LACERA's goal in the RFP process is obtain a comprehensive understanding of the respondent's experience, approach, and success in providing such services. LACERA is also interested in how the respondent differentiates themselves from other firms offering similar services.

### **4. *Assigned Professionals***

The proposal must set forth the name of the project lead and all other professional staff expected to be assigned to LACERA work, including a detailed profile of each person's background and relevant individual experience and the ability of the professionals collectively to function together as a team and also to work effectively with the Board, the IBLC, and staff in performing the scope of services.

### **5. *References***

In this section, the proposal must identify as references at least three (3) public pension systems, public entities, or other reference for which the respondent has provided state legislative advocacy services on State Issues, including, for each reference, an individual point of contact, the length of time the respondent served as legislative advocate, and a summary of the work performed.

### **6. *Fees and Costs, Billing Practices, and Payment Terms***

The respondent must explain the pricing proposal for the scope of work including pricing of fees and costs, billing practices, and payment terms that would apply assuming a five (5) year initial duration of the engagement as well as any additional period during which the engagement may extend. LACERA does not place any limits on the approach to pricing and is open to presentation of more than one pricing alternative for the scope of work, or portions of it. For example, the respondent might propose a monthly fixed fee, with special projects to be performed on an hourly rate basis. This section of the response should include an explanation as to how the pricing approach(es) will be managed to provide the best value to LACERA. The respondent should represent that the pricing offered to LACERA is, and will remain, equivalent to or better than that provided to other governmental clients, or should provide an explanation as to why this representation cannot be provided. All pricing proposals should be "best and final," although LACERA reserves the right to negotiate on pricing.



## **7. Conflicts of Interest**

The proposal must identify all actual or potential conflicts of interest that the respondent may face in the representation of LACERA. Specifically, and without limitation to other actual or potential conflicts, the proposal should identify any representation of the County of Los Angeles, Los Angeles Superior Court, Los Angeles County Office of Education, the South Coast Air Quality Management District, Little Lake Cemetery District, and Local Agency Formation Commission, and, to the respondent's knowledge, any of LACERA's members, vendors, other contracting parties, investments, and employees. The proposal should also identify any positional conflicts of which the respondent is aware.

## **8. Claims**

The proposal must identify all past, pending, or threatened litigation, and all administrative, ethics, and disciplinary investigation or other proceedings and claims against the firm and any of the professionals proposed to provide services to LACERA, whether while such professionals were employed by the firm or employed elsewhere.

## **9. Insurance**

The proposal must explain the insurance that the respondent will provide with respect to the services to be provided and other acts or omission of the firm and its staff in performing legislative advocacy services for LACERA.

## **10. Samples of Written Work**

The proposal may contain samples of the respondent's written work relating to legislative advocacy on State Issues.

## **11. Other Information**

The proposal may contain any other information that the respondent deems relevant to LACERA's selection process.

### **G. Post-Proposal Requests for Information**

LACERA reserves the right in its discretion to request additional information from any respondent, although such requests may not be made to all respondents.

### **H. Interviews and Personal Presentations**

LACERA intends to require one or more interviews with or personal presentations by finalists to be conducted with the Board, the IBLC, and/or staff.

## **I. Evaluation Criteria**

Respondents may be evaluated in the discretion of LACERA based upon the following factors, provided that LACERA may consider any other factors in its discretion:

1. Experience performing legislative advocacy with respect to the State Issues.
2. Substantive knowledge of the State Issues.
3. Quality of the team proposed to provide services to LACERA.
4. Information provided by references.
5. Communications skills.
6. Pricing and value.
7. Team work, both internally and with the Board, the IBLC, and staff.
8. Level of investment and commitment to the LACERA relationship.
9. The organization, completeness, and quality of the proposal, including cohesiveness, conciseness, and clarity.

The factors will be considered as a whole, without a specific weighting. The balancing of the factors is in LACERA's sole discretion. Factors other than those listed may be considered by LACERA in making its selection.

## **J. Engagement Agreement**

LACERA will negotiate an engagement agreement with a successful respondent, which must contain such terms as LACERA in its sole discretion may require.

## **V. GENERAL CONDITIONS**

This RFP is not an offer to contract. Acceptance of a proposal neither commits LACERA to award a contract to any respondent even if all requirements stated in this RFP are met, nor does it limit LACERA's right to negotiate the terms of an engagement agreement in LACERA's best interest, including requirement of terms not mentioned in this RFP. LACERA reserves the right to contract with a vendor for reasons other than lowest price. The evaluation of candidates will be made by LACERA based on its judgment as to the most qualified vendor, which may include both objective and subjective factors given such weight as LACERA may determine in its sole judgment.

Failure to comply with the requirements of this RFP may subject the proposal to disqualification. However, failure to meet a qualification or requirement will not necessarily subject a proposal to disqualification.

Publication of this RFP does not limit LACERA's right to negotiate for the services described in this RFP. If deemed by LACERA to be in its best interests, LACERA may negotiate for the services described in this RFP with a party that did not submit a proposal. LACERA reserves the right to choose to not enter into an agreement with any of the respondents to this RFP. LACERA reserves the right to enter into an agreement with more than one party to provide the services.

#### **A. Notice Regarding the California Public Records Act and Brown Act**

The information submitted in response to this RFP will be subject to public disclosure pursuant to the California Public Records Act (California Government Code Section 6250, et. seq.) and the Brown Act (California Government Code Section 54950, et seq.) (collectively, the Acts). The Acts provide generally that records relating to a public agency's business are open to public inspection and copying and that the subject matter of this RFP is a matter for public open session discussion by the Board, unless specifically exempted under one of several exemptions set forth in the Acts. If a respondent believes that any portion of its proposal is exempt from public disclosure or discussion under the Acts, the respondent must provide a full explanation and mark such portion "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," and make it readily separable from the balance of the response. Proposals marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY" in their entirety will not be honored, and LACERA will not deny public disclosure of all or any portion of proposals so marked.

By submitting a proposal with material marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY," a respondent represents it has a good faith belief that the material is exempt from disclosure under the Acts; however, such designations will not necessarily be conclusive, and a respondent may be required to justify in writing why such material should not be disclosed by LACERA under the Acts.

LACERA will use reasonable means to ensure that material marked "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY" is safeguarded and held in confidence. LACERA will not be liable, however, for disclosure of such material if deemed appropriate in LACERA's sole discretion. LACERA retains the right to disclose all information provided by a respondent.

If LACERA denies public disclosure of any materials designated as "TRADE SECRETS," "CONFIDENTIAL," or "PROPRIETARY", the respondent agrees to

reimburse LACERA for, and to indemnify, defend and hold harmless LACERA, its Boards, officers, fiduciaries, employees and agents from and against:

1. Any and all claims, damages, losses, liabilities, suits, judgments, fines, penalties, costs and expenses. including without limitation attorneys' fees, expenses and court costs of any nature whatsoever (collectively, Claims) arising from or relating to LACERA's non-disclosure of any such designated portions of a proposal; and
2. Any and all Claims arising from or relating to LACERA's public disclosure of any such designated portions of a proposal if LACERA reasonably determines disclosure is deemed required by law, or if disclosure is ordered by a court of competent jurisdiction.

If LACERA staff recommends any respondent to the IBLC and Board for hiring, such recommendation, the reasons for the recommendation, and the relevant proposal(s) will appear on a publicly posted agenda and in supporting materials for public meetings of the IBLC and Board.

#### **B. Reservations by LACERA**

In addition to the other provisions of this RFP, LACERA reserves the right to:

1. Cancel this RFP, in whole or in part, at any time.
2. Make such investigation as it deems necessary to determine the respondent's ability to furnish the required services, and the respondent agrees to furnish all such information for this purpose as LACERA may request.
3. Reject the proposal of any respondent who is not currently in a position to perform the contract, or who has previously failed to perform similar contracts properly, or in a timely manner, or for any other reason in LACERA's sole discretion.
4. Reject all proposals submitted in response to this RFP.
5. Waive irregularities, to negotiate in any manner necessary to best serve the public interest, and to make a whole award, multiple awards, a partial award, or no award.
6. Award a contract, if at all, to the firm which will provide the best match to the requirements of the RFP and the service needs of LACERA in

LACERA's sole discretion, which may not be the proposal offering the lowest fees.

7. Determine the extent, without limitation, to which the services of a successful respondent are or are not actually utilized.

**C. Ownership of Proposals**

The information that a respondent submits in response to this RFP becomes the exclusive property of LACERA. LACERA will not return any proposal.

**D. Valid Period of Proposal**

The pricing, terms, conditions, and other information stated in each proposal must remain valid for 120 days from the date of delivery of the proposal to LACERA.

**E. Cost of Proposal**

LACERA shall not be liable for any costs respondents incur in connection with the preparation or submission of a proposal.

# **LACERA LEGISLATIVE POLICY**

Restated  
and Approved:

Board of Retirement: October 13, 2016  
Board of Investments: October 12, 2016

## Table of Contents

Statement of Mission and Purpose .....	3
Legislative Policy Standards .....	5
Definitions of Board Positions.....	8
Legislative Analysis Memorandum Format.....	10
Action between Board Meetings.....	12
Ballot Measures .....	13
Status Reports.....	14
Legislative Process.....	15

## Statement of Mission and Purpose

The Los Angeles County Employees Retirement Association (LACERA) was established under the County Employees Retirement Law of 1937 (CERL) and administers retirement benefits provided by CERL and the California Public Employees' Pension Reform Act of 2013 (PEPRA). LACERA is governed by the Board of Retirement and the Board of Investments. The Boards have plenary authority and fiduciary responsibility for the system as provided by Section 17 of Article XVI of the California Constitution and in CERL. The Boards have the sole and exclusive fiduciary responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to its members and beneficiaries.

The existence of LACERA and the fiduciary responsibility of its governing Boards are embodied in the organizational mission to *produce, protect, and provide the promised benefits*.

Each element of our mission informs the foundation of this Legislative Policy:

- *Produce* the highest quality of service for our members and sponsors.
- *Protect* the promised benefits through prudent investment and conservation of plan assets.
- *Provide* the promised benefits.

LACERA's retirement plan benefits are provided by CERL, PEPRA, and other provisions under the California Government Code. As a tax-qualified defined benefit plan, LACERA is also subject to federal law under the Internal Revenue Code. The value to our members of the benefits administered by LACERA may also be affected by other provisions of state and federal law. Changes to provisions that affect LACERA are achieved through the state and federal legislative process and through forms of direct democracy by California voters, which include ballot initiatives and referenda. It is also intended that this policy cover state and federal rulemaking, although such action takes place within the Executive branch of government rather than the Legislative. These various proposals, whether submitted through the state or federal legislative process or through rulemaking, may enhance or detract from LACERA's administrative capability and mission; they may also further or infringe upon the Boards' fiduciary responsibilities, member rights and benefits, or LACERA's mission. As such, the Boards will proactively monitor such proposals and voice its position regarding proposals as described in this policy.

LACERA may identify issues that it determines to pursue through sponsorship of legislative proposals. The scope of such issues may vary in applicability to LACERA only or also to other public retirement systems. The diversity of public retirement plans within California implies a diversity of issues that may overlap with or have impact upon other public retirement systems. Consequently, the Boards may directly sponsor



legislation or they may co-sponsor legislation with other public retirement systems, through the State Association of County Retirement Systems, or with other parties that may have an alignment of interest with LACERA with respect to an issue or proposal.

The purpose of this Legislative Policy is to:

- Establish legislative policy standards to guide staff in making recommendations regarding legislative proposals to the Boards.
- Define the range of positions that the Boards may take with respect to legislative proposals.
- Establish a standard memorandum format to provide legislative analysis and recommendations to the Boards.
- Define circumstances in which the Board may need to communicate a position regarding a legislative proposal before the proposal is considered at a regularly scheduled Board meeting.
- Establish guidelines for staff and Board actions related to ballot measures.
- Provide for status reports of LACERA's legislative advocacy efforts.

The overall goal of this policy is to provide the Boards with flexibility to pursue legislative action on any and all issues that the Boards may view as affecting LACERA's mission.

This policy shall be reviewed by the Board of Retirement and Board of Investments biannually at the end of each two-year legislative session and may be amended by action of both Boards at any time.

## Legislative Policy Standards

The legislative policy standards are categorized for the Board of Retirement, the Board of Investments, and both Boards. Legislative action items of interest to the Board of Retirement are first brought before the Board of Retirement's Insurance, Benefits and Legislative Committee for consideration before being recommended to the Board of Retirement. However, items may go directly to the Board of Retirement for consideration with the agreement of both the Chair of the Board of Retirement and the Chair of the Insurance, Benefits and Legislative Committee.

Legislative action items of interest to the Board of Investments are brought directly to the Board of Investments.

Legislative action items of interest to both the Board of Retirement and Board of Investments are brought separately to both Boards. However, such items to be considered by the Board of Retirement will first be considered by the Board of Retirement's Insurance, Benefits, and Legislative Committee before being recommended to the Board of Retirement.

The legislative policy standards conceptually relate to LACERA's mission to produce, protect, and provide the promised benefits; the legislative policy standards also embody the themes of quality of service, prudent investment, conservation of plan assets, and prompt delivery of benefits and services within each element of LACERA's mission.

Legislative proposals or rulemaking that are enacted into law ultimately require implementation by LACERA. The approach staff will take in formulating positions and recommendations is to foster collaboration with divisions within LACERA and resources outside of LACERA, including other public pension systems, LACERA's legislative advocate, and others whose interests align with LACERA's or who may have relevant information, to fully assess the impact of proposals.

Although the legislative policy standards are intended to guide staff in formulating positions and recommendations to the Boards on legislative proposals or rulemaking, the Boards may in their discretion adopt any position on specific proposals. This policy is not intended to limit the flexibility of the Boards to take a position or other action on any legislative matter or rulemaking that may impact LACERA or its stakeholders, whether or not the specific subject matter is listed in this policy.

### **Board of Retirement**

- Support proposals that provide the Board of Retirement with increased flexibility in its administration of retirement plans and operations or enable more efficient and effective service to members and stakeholders.
- Support proposals that correct structural deficiencies in plan design.

- Support proposals that provide clarification, technical updates, or conforming changes to the County Employees Retirement Law of 1937, the California Public Employees' Pension Reform Act of 2013, or other applicable provisions under California law related to public retirement systems.
- Support proposals that protect vested benefits or have a positive impact upon LACERA's members.
- Support proposals that seek to prevent fraud in connection with retirement benefits and applications.
- Oppose proposals that infringe on the Board of Retirement's plenary authority or fiduciary responsibility.
- Oppose proposals that deprive members of vested benefits.
- Oppose proposals that mandate the release of confidential information of members and beneficiaries.
- Oppose proposals that jeopardize the tax-exempt status of LACERA's qualified retirement plan under the Internal Revenue Code and the California Revenue and Taxation Code or the deferred treatment of income tax on employer and employee contributions and related earnings.
- Oppose proposals that create unreasonable costs or complexity in the administration of retirement benefits.
- Oppose proposals that are contrary to or interfere with the Board of Retirement's adopted policies or decisions.

### **Board of Investments**

- Support proposals that give increased flexibility to the Board of Investments in its investment policy and administration.
- Support proposals that preserve the assets and minimize the liabilities of trust funds administered by LACERA.
- Support proposals that are consistent with the Board of Investments' Corporate Governance Principles.
- Support proposals that are consistent with the Board of Investments' Statement of Investment Beliefs.
- Support proposals that promote transparent financial reporting.

- Oppose proposals that infringe on the Board of Investments' authority over the actuarial valuation process.
- Oppose proposals that infringe on the Board of Investments' plenary authority or fiduciary responsibility, including but not limited to investment mandates or restrictions.
- Oppose proposals that create unreasonable costs or complexity in the administration of investments.
- Oppose proposals that are contrary to or interfere with the Board of Investment's adopted policies or decisions.

### **Board of Retirement & Board of Investments**

- Support proposals that harmonize the powers and functions of the Board of Retirement and Board of Investments but do not encroach on each Board's respective separate jurisdiction.
- Support proposals that enhance board member education and ethics.
- Address proposals related to the administrative budget.
- Address proposals related to the appointment of personnel.

## Definitions of Board Positions

### **SPONSOR OR CO-SPONSOR**

- Indicates that the proposal was initiated by the Board or that the proposal was initiated by one or more organizations with which LACERA shares sponsorship.
- Authorizes staff to engage with LACERA's legislative advocate to achieve passage of the proposal.

### **SUPPORT**

- Indicates that the Board believes the proposal should become law.
- Authorizes staff to engage with LACERA's legislative advocate to achieve passage of the proposal.

### **SUPPORT IF AMENDED**

- Indicates that the Board conditionally supports the proposal in becoming law and that amendments are necessary to facilitate implementation and administration.
- Authorizes staff to engage with LACERA's legislative advocate to communicate the Board's position and incorporate amendments into the proposal.

### **NEUTRAL**

- Indicates that the proposal affects LACERA and its stakeholders, but the Board neither supports nor opposes it.
- Does not require engagement with LACERA's legislative advocate to achieve passage or defeat of the proposal.

### **OPPOSE**

- Indicates that the Board does not believe the proposal should become law.
- Authorizes staff to engage with LACERA's legislative advocate to communicate the Board's position and to defeat the proposal.

### **OPPOSE UNLESS AMENDED**

- Indicates that the Board conditionally opposes the proposal in becoming law and that amendments are necessary to remove the Board's opposition.
- Authorizes staff to engage with LACERA's legislative advocate to communicate the Board's position and to incorporate amendments into the proposal.

## **WATCH**

- Indicates that the proposal does not affect LACERA and its stakeholders but would be enacted under a law that covers LACERA such as CERL or PEPRA.
- Indicates that proposal will be resubmitted to the Board for consideration if amendments cause the proposal to affect LACERA and its stakeholders.

Once the Board has acted, these positions will typically be communicated by means of a letter from the Chief Executive Officer to the appropriate legislative officers. Staff coordinates with LACERA's legislative advocate in preparing this letter and developing a communication and distribution strategy for the letter, which may include verbal communications by the legislative advocate with relevant legislators and/or legislative staff. In the rulemaking context, LACERA's positions will typically be communicated to the enacting state or federal agency by means of a comment letter where the agency has provided an opportunity for public comment on a proposed rule before it is finalized and becomes effective.

## **Legislative Analysis Memorandum Format**

The following is an outline of the format of the legislative analysis memorandum provided by staff. In general, the memorandum will follow this format but may be modified for specific cases.

Date

TO:

FROM:

FOR:

SUBJECT: **Bill Number**

*Author:*

*Sponsor:*

*Introduced:*

*Amended:*

*Status:*

*Board Position:*

*Committee Recommendation:*

*Staff Recommendation:*

*[If the memo addresses rulemaking, the Subject section will provide similar relevant information.]*

## **RECOMMENDATION**

*[This section states staff's or the Committee's recommendation to the Board.]*

## **LEGISLATIVE POLICY STANDARD**

*[This section discusses the application of LACERA's legislative policy standards to the proposal and the justification for the recommendation to the Board.]*

## **SUMMARY**

*[This section describes the provisions of the proposal and the key additions or updates the proposal makes to existing law.]*

## **ANALYSIS**

*[This section provides an analysis of the effects and implications of the proposal on LACERA.]*

## **IT IS THEREFORE RECOMMENDED THAT YOUR BOARD**

*[This section restates staff's or the Committee's recommendation and summary or concluding comments.]*

## **Attachments**

**Attachment 1—Board Positions Adopted On Related Legislation**

*[This attachment states the positions the Board has previously taken on the subject matter of the bill.]*

**Attachment 2—Support And Opposition**

*[This attachment identifies those entities that have already taken a position on the bill.]*

**Bill Text**



## Action between Board Meetings

The Board of Retirement generally meets twice a month, including a disability meeting on the first Wednesday and an administrative meeting on the Thursday following the second Wednesday; the Board of Investments meets once a month on the second Wednesday. The meeting schedules of the Boards do not necessarily accord with the hearing schedules and deadlines of the Legislature.

The policy will provide direction for staff to engage with LACERA's legislative advocate to communicate a position on amendments to a bill before formal consideration by the Board of Retirement or Board of Investments if all the following conditions are met:

1. The Board had adopted a Support, Support If Amended, Oppose, or Oppose Unless Amended position on the bill *before* it was amended.
2. Substantive amendments that may justify a change in the Board's position to other than Neutral or Watch have occurred in the bill *after* the Board adopted a position and *before* the next regularly scheduled board meeting.
3. Consideration of the amended bill by a legislative committee or by the Assembly or Senate floor will occur *before* the amended bill can be considered at the next regularly scheduled board meeting.

Staff will take the following actions:

1. Prepare a legislative analysis of the amended bill for use in consultation.
2. Consult with the Chief Counsel, Chief Executive Officer, and legislative advocate for input regarding the amended bill to determine if the new position should be communicated to the Legislature.
3. If the new position should be communicated to the Legislature, consult with the Chair (or if not available, the Vice Chair) of the Board that has jurisdiction over the subject matter of the amended bill and obtain approval that the new position be communicated.
4. At the next regularly scheduled Board meeting, present a report to the Board regarding the position communicated in Step 3 and a summary of actions taken.

## Ballot Measures

California law provides for citizens to use ballot measures to initiate a state statute or a constitutional amendment or to repeal legislation through a veto referendum. The California State Legislature may also use ballot measures to offer legislatively referred state statutes or constitutional amendments.

In general, a government agency may not spend *public funds* for a partisan *campaign* advocating the passage or defeat of a ballot measure. It is, however, permissible for a government agency to engage in *informational* activities. What distinguishes *informational* activities from *campaign* activities depends on the style, tenor, and timing of the activity.

From time to time, ballot measures may be offered that are related to public retirement plans. The following guidelines are intended to provide guidance on actions that may be taken with respect to ballot measures on public retirement plans:

- Providing informational staff reports and analysis on the ballot measure's effect in a meeting open to the public.
- Providing a recommendation for the Board to take a position on the ballot measure in a meeting open to the public where all perspectives can be shared. (The Board may or may not take a position on any ballot measure. The Board may take a position when it determines it is necessary to publicly express its opinion for or against a matter on which it feels strongly with respect to its impact on LACERA.)
- Providing the Board's position and views on the ballot measure's merits and effects to interested stakeholders and organizations.
- Responding to inquiries from stakeholders and the public regarding the Board's position and views on the ballot measure.

The Fair Political Practices Commission (FPPC) was created by the Political Reform Act and requires government agencies to report expenses used to advocate or unambiguously urge the passage or defeat of a measure in an election. The FPPC also prohibits government agencies from paying for communication materials that advocate or unambiguously urge the passage or defeat of a measure in an election. LACERA must be cautious in not engaging in activities that can be characterized as *campaign* activities, which are prohibited and would be subject to campaign expenditure reporting requirements. Therefore, all activities related to ballot measures are subject to review by Chief Counsel.

## Status Reports

For bills on which the Boards have taken a position, staff will provide a monthly status report listing each bill, its current status in the legislative process, and copies of communications used for lobbying the Legislature. The status report will be included in the green folders provided to the Board of Retirement and Board of Investments before regularly scheduled board meetings.

At the end of each legislative session, staff will provide a year-end report of all the bills on which the Boards had taken a position and their final disposition.

## Legislative Process

The following pages include an outline<sup>1</sup> and a flowchart<sup>2</sup> of the California legislative process through which a bill becomes law. In general, bills in the federal legislative process move through similar stages.

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<sup>1</sup> Overview of Legislative Process – Official California Legislative Information (<http://www.leginfo.ca.gov/bil2lawx.html>).

<sup>2</sup> The Life Cycle of Legislation: From Idea into Law. California Legislature: Assembly Rules Committee.

# **OVERVIEW OF LEGISLATIVE PROCESS**

The process of government by which bills are considered and laws enacted is commonly referred to as the Legislative Process. The California State Legislature is made up of two houses: the Senate and the Assembly. There are 40 Senators and 80 Assembly Members representing the people of the State of California. The Legislature has a legislative calendar containing important dates of activities during its two-year session.

## **Idea**

All legislation begins as an idea or concept. Ideas and concepts can come from a variety of sources. The process begins when a Senator or Assembly Member decides to author a bill.

## **The Author**

A Legislator sends the idea for the bill to the Legislative Counsel where it is drafted into the actual bill. The draft of the bill is returned to the Legislator for introduction. If the author is a Senator, the bill is introduced in the Senate. If the author is an Assembly Member, the bill is introduced in the Assembly.

## **First Reading/Introduction**

A bill is introduced or read the first time when the bill number, the name of the author, and the descriptive title of the bill is read on the floor of the house. The bill is then sent to the Office of State Printing. No bill may be acted upon until 30 days has passed from the date of its introduction.

## **Committee Hearings**

The bill then goes to the Rules Committee of the house of origin where it is assigned to the appropriate policy committee for its first hearing. Bills are assigned to policy committees according to subject area of the bill. For example, a Senate bill dealing with health care facilities would first be assigned to the Senate Health and Human Services Committee for policy review. Bills that require the expenditure of funds must also be heard in the fiscal committees: Senate Appropriations or Assembly Appropriations. Each house has a number of policy committees and a fiscal committee. Each committee is made up of a specified number of Senators or Assembly Members.

During the committee hearing the author presents the bill to the committee and testimony can be heard in support of or opposition to the bill. The committee then votes by passing the bill, passing the bill as amended, or defeating the bill. Bills can be amended several times. Letters of support or opposition are important and should be mailed to the author and committee members before the bill is scheduled to be heard in committee. It takes a majority vote of the full committee membership for a bill to be passed by the committee.

Each house maintains a schedule of legislative committee hearings. Prior to a bill's hearing, a bill analysis is prepared that explains current law, what the bill is intended to do, and some background information. Typically the analysis also lists organizations that support or oppose the bill.

## **Second and Third Reading**

Bills passed by committees are read a second time on the floor in the house of origin and then assigned to third reading. Bill analyses are also prepared prior to third reading. When a bill is read the third time it is explained by the author, discussed by the Members and voted on by a roll call vote. Bills that require an appropriation or that take effect immediately, generally require 27 votes in the Senate and 54 votes in the Assembly to be passed. Other bills generally require 21 votes in the Senate and 41 votes in the Assembly. If a

bill is defeated, the Member may seek reconsideration and another vote.

### **Repeat Process in other House**

Once the bill has been approved by the house of origin it proceeds to the other house where the procedure is repeated.

### **Resolution of Differences**

If a bill is amended in the second house, it must go back to the house of origin for concurrence, which is agreement on the amendments. If agreement cannot be reached, the bill is referred to a two house conference committee to resolve differences. Three members of the committee are from the Senate and three are from the Assembly. If a compromise is reached, the bill is returned to both houses for a vote.

### **Governor**

If both houses approve a bill, it then goes to the Governor. The Governor has three choices. The Governor can sign the bill into law, allow it to become law without his or her signature, or veto it. A governor's veto can be overridden by a two thirds vote in both houses. Most bills go into effect on the first day of January of the next year. Urgency measures take effect immediately after they are signed or allowed to become law without signature.

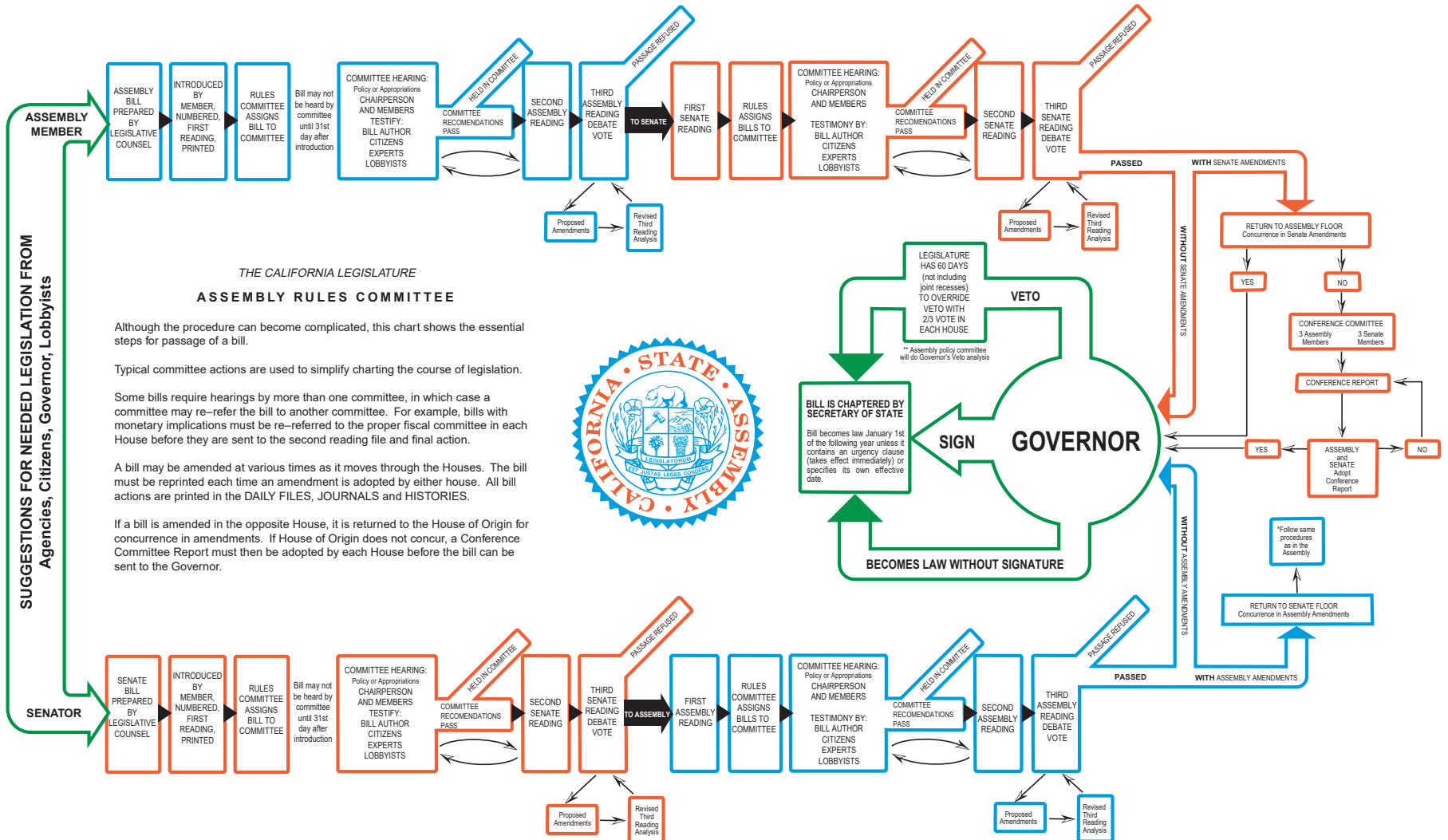
### **California Law**

Bills that are passed by the Legislature and approved by the Governor are assigned a chapter number by the Secretary of State. These Chaptered Bills (also referred to as Statutes of the year they were enacted) then become part of the California Codes. The California Codes are a comprehensive collection of laws grouped by subject matter.

The California Constitution sets forth the fundamental laws by which the State of California is governed. All amendments to the Constitution come about as a result of constitutional amendments presented to the people for their approval.

# THE LIFE CYCLE OF LEGISLATION

*From Idea into Law*



## THE CALIFORNIA LEGISLATURE ASSEMBLY RULES COMMITTEE

Although the procedure can become complicated, this chart shows the essential steps for passage of a bill.

Typical committee actions are used to simplify charting the course of legislation.

Some bills require hearings by more than one committee, in which case a committee may re-refer the bill to another committee. For example, bills with monetary implications must be re-referred to the proper fiscal committee in each House before they are sent to the second reading file and final action.

A bill may be amended at various times as it moves through the Houses. The bill must be reprinted each time an amendment is adopted by either house. All bill actions are printed in the DAILY FILES, JOURNALS and HISTORIES.

If a bill is amended in the opposite House, it is returned to the House of Origin for concurrence in amendments. If House of Origin does not concur, a Conference Committee Report must then be adopted by each House before the bill can be sent to the Governor.



**ATTACHMENT 2**  
**State RFP Update Notice**



**UPDATE NOTICE: EXTENSION OF RESPONSE DEADLINE TO RESPOND TO  
REQUEST FOR PROPOSALS FOR STATE LEGISLATIVE ADVOCACY SERVICES**

The response deadline for this RFP is extended to Friday, August 11, 2017, at 5:00 p.m. The criteria and requirements stated in the RFP remain unchanged. To summarize, and without limiting the content of the RFP, LACERA seeks a state legislative advocacy consultant with two core skills to assist in achieving LACERA's public policy objectives with respect to State Issues as defined in the RFP. Those core skills are: first, the skill and experience to assist LACERA with the legislative and regulatory process, including knowledge of the process and the ability to facilitate access to and effective communication with decision-makers; and second, a strong base of substantive knowledge and experience in the State Issues, as defined. Responses should discuss the respondent's abilities in both areas. Respondents who have already submitted an RFP response are welcome to supplement their response by the extended deadline. The extension does not apply to the RFP for Federal Legislative Advocacy Services, which is now closed.

# **ATTACHMENT 3**

## **Ackler/McHugh RFP Responses**

*Los Angeles County Employees Retirement  
Association*

*Request for Proposal  
State Legislative Advocacy Services*

*June 16, 2017*

June 16, 2017

LACERA

Attention: Barry Lew  
Legislative Affairs Officer  
300 North Lake Avenue, Suite 620  
Pasadena, CA 91101

Dear Mr. Lew:

It is with great enthusiasm that we offer this comprehensive proposal to LACERA's Board and staff for our team to be your Legislative Advocates in Sacramento.

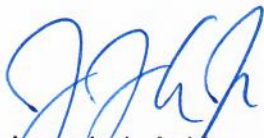
Ackler & Associates has been pleased to serve as your long-time advocate in Sacramento and appreciates the opportunity to submit this proposal to continue the relationship with LACERA. In an effort to proactively build upon our success, Ackler & Associates has formed a strategic alliance with McHugh, Koepke & Associates and our combined firms respectfully submit this joint proposal for your consideration.

While the attached proposal is simply an outline of the experience and services Ackler & Associates and McHugh, Koepke & Associates would provide to LACERA, please know that both firms will go above and beyond to help LACERA be successful in its legislative and regulatory arenas in California. Between the two firms, we have over 60 years of government affairs experience to bring to bear for LACERA.

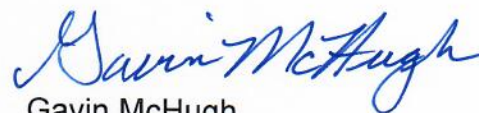
Should you have any questions or concerns, we would be pleased to discuss the proposal – services offered and retainer level – further to ensure it meets LACERA's needs and expectations. Further, we pledge that the information stated in our proposal and the representation of experience by both firms is accurate and reliable.

Thank you very much for your consideration. It would be an honor for both firms to represent LACERA through this strategic alliance. We look forward to hearing from you.

Sincerely,



Joseph J. Ackler, Jr.  
Principal  
Ackler & Associates



Gavin McHugh  
Managing Partner  
McHugh, Koepke & Associates

## EXECUTIVE SUMMARY

**Ackler & Associates** was established in 1989 and has represented a broad array of clients including some of California leading corporations Amgen, Allergan, Charles Schwab & Co., Virgin America and one of the state's largest public employee unions the California Correctional Peace Officers Association as well as our successful representation and advocacy for LACERA. Prior to starting Ackler & Associates, Mr. Ackler was head of California state government relations for one of Los Angeles' leading corporations and community leaders Atlantic Richfield Company (ARCO). Working for ARCO and the wherewithal the Company provided was a wonderful experience and the professional training Mr. Ackler received was invaluable and utilized until this day.

Originally established in 2000, **McHugh, Koepke & Associates** is a government relations firm specializing in advocacy, public affairs, research and analysis for clients throughout California. We understand that one governmental action can have tremendous impact on our clients' interests. Associations, businesses, coalitions, and nonprofit organizations need advocates that are watching out for their specific interests and potential for direct impacts. McHugh, Koepke & Associates remains on top of the latest actions, proposals, debates and messages to ensure our clients are prepared to act immediately and effectively to protect and promote their interest in the fight. Our lobbyists – Gavin McHugh, Shari McHugh and Dawn Koepke – are at the top of their game, working with clients to promote their agenda and elevate their profile in front of the right people at the right time.

## EXPERIENCE, APPROACH AND SUCCESS

Mr. Ackler has represented LACERA for more than 15 years and has successfully handled every legislative issue and bill that LACERA has sponsored or taken a position on during that time. Together, LACERA and Ackler & Associates have achieved great success. LACERA legal staff has the expertise and understanding of the 37 Act County Employees Retirement Law (CERL) and the evolution of the needs of our retirees and members, leading us to the policies and issues we pursue at the state level. Ackler & Associates' historical engagement and expertise has resulted in LACERA being successfully positioned in the Legislative process over the years. Further, Ackler & Associates' beneficial counseling of the LACERA Board and staff on the political sensitivities and realities of Sacramento in order to achieve our goals has been highly valuable.

Given the ever-changing policy and political dynamics in California, there is no better approach to success in the Legislature than to ensure you have the right experience and expertise representing you. Ackler & Associates along with McHugh, Koepke & Associates have proven track records not only with LACERA but with all of our clients and a solid and respected reputation in the Capitol.

This proposal demonstrates a proven track record between the two firms and also ensures LACERA has the best representation and team lined up to fight for its interests in the Capitol. Our combined team gives LACERA four established, successful and respected lobbyists advocating for LACERA's policies and positions.

Further, while many firms propose to offer the best service possible, we can assure LACERA that it will be a priority for each of the firms with a direct partner representing and lobbying your issues. No junior associates or lobbyists will be working with LACERA – only the highest of representation through both firms' partners. LACERA can rest assured that it will receive highest level of service and attention from our joint efforts.

At the end of the day, everyone at Ackler & Associates and McHugh, Koepke & Associates believes in a bi-partisan approach to advocacy, recognizing the important role that both Democrats and Republicans can play in any given situation. We have solid relationships with elected officials and staff across the political spectrum, which allows us to devise and implement effective lobbying and communication strategies, analyze the impacts of proposed legislation and regulations, organize grassroots advocacy efforts and draft legislation, regulations and technical amendments that will be the most effective to achieving their goals. We work closely with our clients to ensure their specific and unique needs are met with diligence and attention to detail.

### **ASSIGNED PROFESSIONALS**

While both firms commit to bringing all resources to bear, as needed, on any key issue of importance to LACERA, Joe Ackler will be the primary contact, lobbyist and project lead with Shari McHugh serving as the secondary lobbyist for LACERA. Between the two, Joe and Shari will serve as the point people handling the bulk of LACERA's activities, including quarterly meetings with the Board; updating, responding and interacting with executive and legislative staff; planning strategy and advocacy/lobbying in the Capitol; and more. To be clear, however, Gavin McHugh and Dawn Koepke will serve as additional support in the event that an all-hands-on-deck approach is necessary to meet LACERA's objectives. Ultimately, the joint nature of advocacy will be seamless as the two firms share office space and interact on a daily basis. As such, joint interaction on LACERA's issues will be a normal course of doing business as a team.

Between Joe Ackler and Shari McHugh, they have over 50 years of lobbying and government relations experience in Sacramento, developing and fostering critical contacts and personal relationships in and around the Capitol. As former in-house and contracted advocates for a host of trade associations, Joe and Shari have worked effectively to move their clients' agendas forward in the Capitol.

**Joseph J. Ackler, Jr.**  
Principal

**Biography**

Ackler & Associates, started in 1989, provides governmental advocacy and public affairs consulting at the state and local levels of California government. The firm has represented a broad range of interests, including clients in the airline, agriculture, biotechnology, pharmaceutical and plastics industries, as well as the largest county employee retirement association in California. Ackler & Associates has a proven track record of successfully promoting and defending their clients' interests through development of comprehensive government affairs programs.

Joe Ackler began his career with Atlantic Richfield Company (ARCO) and held a variety of public affairs assignments, including Director of Media Relations, Philadelphia; Manager of Constituency Relations, Los Angeles; lobbying assignments in Washington, D.C. and the Rocky Mountain States and Director of Government Relations in Sacramento responsible for ARCO's state and local government activities throughout California.

Mr. Ackler holds a Bachelor Degree in Political Science from Mount St. Mary's University and a Master's Degree in Business Administration from Widener University.

## **Biography**

Shari has over 16 years successful experience in government affairs and public relations. She is currently a partner in the lobbying firm of McHugh, Koepke & Associates. Shari's lead clients include the California Credit Union League, the Hartford, the National Association of Insurance & Financial Advisors of California, the Pacific Association of Domestic Insurance Companies, and the Pechanga Band of Luiseno Mission Indians.

Prior to joining McHugh, Koepke & Associates, Shari was the Senior Vice President for the Coalition of California Insurance Professionals (CCIP). Shari was responsible for overseeing and implementing the lobbying and regulatory agenda developed by CCIP's Steering Committee. She served as staff liaison to the various task forces and steering committees of coalition partners.

Prior to joining CCIP, Shari was the Senior Vice President of PIA. As staff liaison to PIA's Public Affairs Committee, she managed the formulation and implementation of PIA's legislative program and worked with officials from the DOI on regulatory issues. She was also responsible for PIA's grassroots network and media program.

Shari has worked diligently over the years to develop and maintain working relationships with legislators, legislative staff, regulatory officials, administration representatives, lobbyists, media personnel and industry representatives. Her work in helping to establish and grow PIA's government and public affairs department earned Shari a Presidential Citation award in 1996 in recognition of meritorious efforts and achievements.

Prior to working with PIA, Shari served as a legislative aide for Melendez Associates, a Sacramento-based lobbying firm, where she worked on issues for major California employers such as ARCO, E & J Gallo Winery and the Port of Long Beach.

Shari graduated from California State University Sacramento with a Bachelor's degree in Political Communication and Government.





government  
relations

**Gavin McHugh**  
Legislative Advocate  
Principal/Partner

## **Biography**

Gavin McHugh originally established the firm of McHugh & Associates in 2000. In 2012, the firm welcomed the addition of Dawn Koepke as Partner, forming McHugh, Koepke & Associates.

Gavin has over 20 years of lobbying and government relations experience in Sacramento. He has successfully advocated the interests of his clients and has developed the personal relationships and expertise necessary to develop and promote legislation and regulation before California's State Senate, Assembly, Governor and state agencies.

Thanks to his extensive experience working with large corporations, small businesses, associations and coalitions, Gavin is able to personally tailor advocacy programs to meet the needs of all of the clients. He has tremendous experience working the Legislature, Administration and State Agencies on issues such as business, taxation, environmental, healthcare, tort reform, workplace safety, and public safety. He is able to bring both his government relations management skills and policy expertise to each client so that their individual government relations program accomplishes their goals and objectives.

Prior to establishing McHugh & Associates, Gavin was Senior Vice President, Government Affairs, for the California Manufacturers and Technology Association (CMTA) for nearly 3 years. The CMTA was established in 1918 and is the only state wide association dedicated solely to representing the interests of California manufacturers before the state legislature, Governor's office, state agencies and courts.

While at CMTA, he was responsible for overseeing CMTA's advocacy program before the legislature and administration. Gavin's top priorities included improving the state's business climate by accomplishing meaningful reform of California's regulatory, tax and tort laws.

From 1991 through 1997, Gavin was Manager of U.S. Public and Government Affairs for Texaco in Sacramento where he worked closely with legislators of both parties to foster pro-growth legislation.

Prior to his assignment with Texaco, Gavin was legislative advocate from 1984 to 1991 for the California Correctional Peace Officers Association (CCPOA). His responsibilities included developing and implementing the association's California legislative program.

Prior to joining the CCPOA, he served on the staff of Senators Bob Presley and Dan McCorquodale.

Gavin graduated from California State University, Stanislaus with a Bachelor of Arts degree in Communications Studies.

## **Biography**

Dawn Koepke was named a partner in 2012 after joining the McHugh team in December 2003. She has been a key asset to the firm, handling the legislative, regulatory and research needs of the firm's clients and lobbies in the policy areas of public safety, health and human services, resources, environmental safety, chemical management, and adult education. Dawn serves as a co-chair of the Green Chemistry Alliance and a member of the Thursday Group, business-friendly sweat-equity coalitions whose efforts are focused on green chemistry and an array of environmental legislative and regulatory actions.

As an Associate at McHugh & Associates, Dawn successfully advocated on behalf of her clients. As a co-chair of the Green Chemistry Alliance (GCA), Dawn helped to successfully elevate and promote industry's proactive, solutions-oriented positions on green chemistry, chemical management and regulation, and recycling initiatives before the Legislature, Administration, Department of Toxic Substances Control (DTSC) and other state Agencies. Most notably, she helped build the GCA as a business community resource to work with DTSC to help frame, develop and implement California's groundbreaking Green Chemistry Initiative and pollution prevention aspects of the program.

Prior to joining the McHugh team, Dawn served as a member of the Davis Administration. As Special Assistant to Governor Gray Davis she helped manage the Governor's daily activities, assisted the Legislative Affairs team, coordinated and prepared responses regarding major policy and legislative action on behalf of the Administration in response to public inquiry.

Dawn graduated from San Francisco State University with a Bachelor of Arts degree in International Relations. As a component of her degree in International Relations, Dawn studied abroad at the Universidad de Salamanca in Spain where she completed an intensive Spanish language and literature program.

In 2006, Dawn completed her Master's Degree in Public Policy & Administration (MPPA) from California State University, Sacramento with special focus in regulatory affairs and collaborative studies. Dawn's thesis work focused on regulation as a policy tool to achieve policy goals with specific focus on environmental regulatory efforts in California.

## REFERENCES

- 1) Gregg Rademacher,  
Chief Executive Officer  
LACERA  
(626) 564-6000  
[GRademacher@lacera.com](mailto:GRademacher@lacera.com)
- 2) Stephen Walker,  
Director of Government Affairs  
California Correctional Peace Officers Association (CCPOA)  
(916) 440-8900  
[stephen.walker@ccpoa.org](mailto:stephen.walker@ccpoa.org)
- 3) Joseph Sprague  
Sr. Vice President, External Relations  
Alaska /Virgin America Airlines  
(206) 392-5032  
[Joe.Sprague@AlaskaAir.com](mailto:Joe.Sprague@AlaskaAir.com)

## FEES AND COSTS, BILLING PRACTICES AND PAYMENT TERMS

Ackler & Associates will serve as the primary for the LACERA account, billing on a monthly retainer basis at a total of \$6250.00 per month. The monthly retainer would be billed on the first of each month and payable within 30 days.

In terms of reimbursable expenses, all travel costs associated with travel to LACERA's headquarters or other LACERA required trips would be only with LACERA prior approval of all normal travel costs (airfare, hotel, transportation). In the event a significant new project is requested to be undertaken outside of the normal expected scope of the agreement, Ackler & Associates and McHugh, Koepke & Associates reserve the right to reevaluate the workload and associated fees on a case-by-case basis with direction and agreement by LACERA's staff and Board. To the extent any other extraordinary costs or projects outside the scope of the agreement arise relative to both firms' representation, invoicing of LACERA would only occur with prior approval of such costs. Daily, normal operational costs and supplies are included within the monthly retainer.

## CONFLICTS OF INTEREST

Ackler & Associates and McHugh, Koepke & Associates Government Relations specialize in advocacy, public affairs, research and analysis for clients throughout California. This work is performed in a forthright manner with the utmost integrity. We are proud of the work we do on behalf of our clientele that includes Fortune 500 companies, trade and member-driven associations, and professional groups with offices, departments and subsidiaries located across the State, Nation and the World.

We do not see any conflicts of interest with our combined clients in the areas of interest to LACERA. If a conflict ever did arise we are prepared to acknowledge it, separate our staff and continue to represent LACERA's interest to the fullest extent.

As one might expect, the client interests Ackler & Associates and McHugh, Koepke & Associates represent vary significantly. That said, we do not believe that we have any direct conflicts of interest that would hinder the firms' ability to perform to the highest standard and advocate to the full extent on behalf of LACERA's interests and objectives.

## **CLAIMS**

Ackler & Associates and McHugh, Koepke & Associates certify that neither firm currently has any outstanding claims against themselves or their partners and associates.

## **INSURANCE**

Ackler & Associates and McHugh, Koepke & Associates maintain all required business and liability insurance necessary for government affairs consulting and advocacy and would be pleased to provide certification of such policies as may be requested by LACERA.

August 4, 2017

LACERA  
Attention: Barry Lew  
Legislative Affairs Officer  
300 North Lake Avenue, Suite 620  
Pasadena, CA 91101

**RE: LACERA RFP Supplement**

Dear Mr. Lew:

We appreciate the opportunity the extension of the deadline gives us to supplement our team's RFP for government affairs representation for LACERA.

Our team is excited LACERA's Board wants to pursue a high level of state engagement when appropriate. As experienced lobbyists, that is our foremost ability and desire to provide LACERA that opportunity before the decision makers in Sacramento.

In response to the additional detail outlined in the extension notice, we would like to expand on the two core skills LACERA has identified to assist in achieving your public policy objectives. Additionally, we would like to share some potential strategies for heightening LACERA's profile in Sacramento and engaging with the LACERA Board. Ultimately, our goal would be to provide the Board with more background on the trends, discussions and debate in Sacramento and to elevate LACERA's profile in the Capitol to appropriately participate and actively engage in these discussions with strategic positioning. As part of this effort, we would look forward to the opportunity to meet with the Board at least quarterly, listen to their interests, provide the background needed to take positions and offer our best political advice.

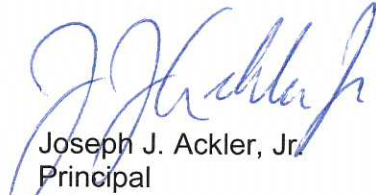
As noted in our initial RFP, Ackler & Associates has been pleased to serve as your long-time advocate in Sacramento and appreciates the opportunity to submit this supplement to our proposal to continue the relationship with LACERA. In an effort to proactively build upon our success, Ackler & Associates has formed a strategic alliance with McHugh, Koepke & Associates and our combined firms respectfully offer this supplement to our joint proposal for your consideration.

While the attached supplement is simply an outline of the experience, services and potential strategies Ackler & Associates and McHugh, Koepke & Associates would provide to LACERA, please know that both firms will go above and beyond to help LACERA be successful in its legislative and regulatory arenas in California and tailor our approach to best fit the needs of LACERA and its Board.

Should you have any questions or if you would like more information, we would be pleased to discuss this supplement and our initial proposal further to ensure it meets LACERA's needs and expectations.

Thank you very much for your consideration. It would be an honor for both firms to represent LACERA through this strategic alliance. We look forward to hearing from you.

Sincerely,



Joseph J. Ackler, Jr.  
Principal  
Ackler & Associates



Gavin McHugh  
Managing Partner  
McHugh, Koepke & Associates

## **Relevant Experience & Qualifications**

Ackler & Associates, Joe Ackler, has a proven and established record of success with LACERA in the legislative process and in providing access to decision makers in Sacramento. Our team approach with McHugh, Koepke & Associates now improves on that record by adding three highly skilled lobbyists to extend the legislative/regulatory reach in the process and adds diversity to our thinking in developing our strategies for success. In addition, with a four person team and the connections each lobbyist has established, LACERA now has broader personal access to more legislators, policy makers, staff and the Administration.

Below is a more detailed overview of the relevant experience between the two firms.

- ◆ **Over 60 combined years of lobbying and government relations experience in Sacramento.**
- ◆ **Experience working with associations and their members**
  - Strategic advocacy on the legislative and regulatory fronts through direct lobbying, coalition work, and more
  - Provide budgetary, legislative & regulatory updates for associations and their members – monthly, quarterly, end of session, as requested by the client
  - Host government relations conference calls & participate in Board meetings, as requested by the client
  - Plan and coordinate legislative advocacy days and events – site arrangements, scheduling, material preparation, advocacy training, guest speaker arrangements
  - Provide insight and direction on key political races and initiatives
  - Provide grassroots advocacy assistance – preparation of materials and alerts
  - Detailed technical experience and work with regulatory agencies on health, human services and financial services regulatory programs including drafting of regulatory amendments and materials
- ◆ **Diversity of Clients** – provides for greater reach with legislators, agency and administration officials. Such diversity has allowed us to work with and develop relationships with members on both sides of the aisle on multiple fronts, beyond just the issues that they are intimately involved in on a daily basis. We help further our clients' relationship building through meet-and-greets both in the Capitol and in the districts that provide education and advocacy opportunities.
- ◆ **Monitoring & Tracking of Legislation & Regulation** – using the most up-to-date and timely system available, we are constantly monitoring bill introductions, amendments, and committee actions. In doing so, nothing slips through the cracks. Further, we work with our clients to customize their bill tracking systems to provide the reporting information most helpful to them and provide it as often as the client desires.

## **Relevant Issues & Insight**

Our team has established knowledge and experience in health and pension benefits and plan administration issues. All of these issues are debated and come through two major policy committees in the Legislature – the Public Employees, Retirement and Health Committees.

Ackler & Associates has represented LACERA and McHugh, Koepke & Associates has represented the California Correctional Peace Officers Association (CCPOA) for many years. This representation has led us to work within these two Committees to help shape the policies with the respective chairs, staff and legislative bill authors all of our careers. Our experience working within these committees has also given us established relationships and credibility with the various public employee union lobbyists, which can be invaluable.

Additionally, our knowledge on the Health Committee goes beyond public employees representing our clients in the biotech, pharmaceutical, insurance and financial services sectors. We have been very involved in the debate on the cost of health care, insurance benefits, healthcare system reform and more.

- ◆ **Healthcare, Biomedical, & Life Sciences Experience:**
  - Lobbied Issues: single payer healthcare; health insurance and included benefits; career technical education; prescription drug prices; price controls; opioid addiction and funding solutions; pharmaceutical issues; and more
- ◆ **Pension Experience:**
  - Lobbied Issues: CERL; PEPRRA; public service retirement benefits, disability benefits, benefit reductions; retirement system governance; data privacy and protection; public pension plan operations; and Political Reform Act

## **Proposed Strategy Concepts for Consideration**

We pride ourselves on our ability to develop and execute effective strategies to achieving our clients' needs. This work is not done in a vacuum, however, as we must work collaboratively with a host of stakeholders to achieve success – the client, outside consultants, media strategists, the legislature, the administration, regulatory agencies and other interested stakeholders.

The following provides some suggested activities and strategies that we would envision to help achieve LACERA's goal of enhancing its profile in the Capitol, ensuring timely information is provided to the Board and ensuring the best strategic positioning in Sacramento.

- ◆ **Strategic Advocacy** – at the very beginning of the year and the start of the Legislative session, it is a good plan to come to Sacramento and present LACERA's policy interest for the upcoming session. It is also an excellent time to learn from staff and Legislators what issues they are planning to introduce and the policy debates they anticipate in our areas of interest. We would anticipate these beginning of the year visits be handled by LACERA's Executive Director, General Counsel and Legislative Affairs Officer. Depending on what we learn these visits may require a follow up meeting and, if appropriate, we could invite a Board Member to join us.

Additionally, we would offer LACERA senior staff and Board Members, as appropriate, opportunities to come to Sacramento and attend hearings and public forums on the broader issues which the Board may have an interest or want to be informed. For example, the Assembly and Senate Public Employees, Retirement Committees had a joint hearing the end of June regarding CalPERS and CalSTRS regarding some of their challenges. This is a minor example, but the point is we are aware the Board wants to participate at a higher level of state engagement and we will present those opportunities as they arise in Sacramento and sometimes other locations around the state.



- Member Meet & Greets: Engage with key legislative members and staff in an effort to educate them about the Association's members, priorities and goals.
- Strategic Meetings: Key Administration officials including the Governor's key policy and budget advisors
- Strategic Collaboration: Work and coordinate with other like-minded stakeholders on key policy issues of interest. Such coordination would include joint as well as individual meetings, ensuring similar messaging and general strength in numbers approach.

#### ◆ **Relationship Building**

- We have met several times with the Assemblyman that coordinates the Los Angeles Caucus. We have offered to have Gregg Rademacher make a presentation to the Caucus here in Sacramento updating the Los Angeles County Legislators on LACERA. We would anticipate making this a yearly presentation to the Legislators that are most important to us and the most powerful block in the Legislature.
- We would recommend LACERA host a reception/dinner in Sacramento for the Los Angeles County Legislators and the Chairs of the Assembly and Senate Public Employees, Retirement and Health Committees. We envision inviting the Board to attend this event along with senior staff at LACERA. The agenda for this meet and greet event would change depending on the policies before the Committees at that time. At this type of event we would expect a brief welcome and talk by LACERA's Executive Director or the Chair of our Board. The Legislators attending would also make brief comments and we would work with staff to have the appropriate Legislative speaker. We would also recommend in alternating years to host this event in Los Angeles.

#### ◆ **Legislative & Regulatory Monitoring & Updates**

- Work with LACERA's Board to identify pertinent legislative and regulatory proposals
- Review newly introduced and amended legislation on a daily basis and will provide relevant updates to LACERA as relevant
- Prepare Legislative and Regulatory Updates for LACERA and the board as needed or appropriate – Weekly, Monthly, Quarterly
- Host conference calls for LACERA's Board and staff, as needed, to discuss strategy, provide updates, and more

#### ◆ **Advocacy**

- Assistance with prioritizing, developing strategy, materials tailored to legislators and LACERA board interests
- Scheduling of meetings with authors, committee members, committee staff and stakeholders as appropriate
- Coalition building and involvement
- Letter/material preparation and distribution

- Preparation of testimony and/or talking points for hearings
- Additionally, as each legislative session unfolds, there could be some significant policy or issue that LACERA would like weigh in or discuss more in a public forum. We would recommend pursuing an information Legislative hearing on the issue that could be set in Los Angeles and we could work with the Committee to set an agenda most hospitable to our position



# Insurance, Benefits & Legislative Committee September 6, 2017

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Joe Ackler | Ackler & Associates

Shari McHugh | McHugh Koepke & Associates



# LACERA

1

New Team

2

Proven Experience

3

Broader Political Reach

4

LACERA's Profile / Board Engagement

5

Proposed Strategies



# Questions & Answers



Insurance, Benefits & Legislative Committee  
September 6, 2017

Thank You

**LACERA**



**Ackler & Associates**  
Governmental Advocacy and Public Affairs Consulting

**McHugh  
Koepke &  
Associates**

# ATTACHMENT 4

## Alston & Bird RFP Responses



# **RFP Response**

## **Prepared for LACERA**

### **State Legislative Advocacy Services**

June 2017



June 23, 2017

LACERA  
Attention: Barry Lew  
Legislative Affairs Officer  
300 North Lake Avenue, Suite 620  
Pasadena, CA 91101  
blew@lacera.com

Re: Alston & Bird's Proposal in Response to the Los Angeles County  
Employees Retirement Association (LACERA) RFP for State Legislative  
Advocacy Services Concerning Health, Pension, and Plan  
Administration Issues

Dear Mr. Lew:

Enclosed please find Alston & Bird's response to provide State Legislative Advocacy Services. We appreciate the opportunity to present our capabilities in this response.

LACERA is a valued client of this firm. Dominique Shelton and the Alston & Bird Privacy and Cybersecurity team provide important services to LACERA in the safeguarding of plan information and operations in service to participants and the public. We believe in the mission of LACERA and are honored to be part of the team.

At Alston & Bird, our mission is to provide the highest-quality legal advice and responsiveness by assembling an interdisciplinary team possessing the talent and expertise to meet any challenges you may face. We pride ourselves on finding efficiencies in our representations and maximizing our value proposition by putting the breadth of our experience at your fingertips. Our goal is to deeply understand your legal needs and, based on that understanding, to offer effective and efficient tailored solutions.

The following materials provide a brief introduction to the breadth and depth of Alston & Bird's experience. We endeavored to keep this RFP response concise, but we would be pleased to provide more detailed information about any of our services covered in the materials that follow.

We welcome the opportunity to visit with you and your team and have you meet the members of the firm with whom you would be dealing if our RFP is accepted. Alston & Bird enjoys the opportunity to represent LACERA in the Cybersecurity area. We would be honored to also be working together on federal advocacy in the vital areas of health, pensions, and plan administration.

Sincerely yours,



Maureen Gorsen

## Table of Contents

Response to RFP Questions.....	1
An Overview of Alston & Bird .....	9
Employee Benefits & Executive Compensation Practice.....	11
State and Local Tax Practice .....	13
Tax Policy & Regulation .....	14
Biographies .....	15
Maureen F. Gorsen .....	16
Dominique R. Shelton .....	20
Kathleen A. Hill .....	31
John R. Kabateck.....	33
David R. Godofsky, F.S.A. ....	35
Syed Fahad Saghir, A.S.A. ....	38
Meredith Gage.....	39
Carolyn E. Smith .....	40
Earl Pomeroy .....	45

## Response to RFP Questions

### Executive Summary

Alston & Bird is well-positioned to advise LACERA in a bipartisan manner on public policy matters in California. We have unique experience with how policy is made, and we know the people who make it: Government and agency officials; members of Congress and their staff; think tanks and institutes; academics; and the media. We are among the most visible and respected voices on financial services, foreign trade matters, environment and agriculture, e-commerce, energy, privacy issues, taxation and health care. We know how to advocate effectively on behalf of our clients in any forum.

Alston & Bird's clients appreciate the sophisticated understanding we have of the pivotal relationship between government and businesses. Our clients grapple daily with the intricacies of the laws and regulations that Congress, the White House and the courts continually produce. We help clients participate in and shape the public policy debate before, rather than after, those decisions are made. Our team of attorneys and senior legislative advisors have served in key positions in the government and maintain strong ties with key policymakers.

### Experience, Approach, and Success

Alston & Bird has a long track record of success representing California clients in their legislative efforts and public policy goals by combining substantial expertise within the firm with local political acumen. Key components of our efforts include:

- Analyzing our clients' interests from a public policy perspective and educating clients on policy trends and developments;
- Facilitating meetings with policymakers and working closely with administration officials, members of Congress and their staffs on issues vital to our clients' interests;
- Advocating those interests before the Congress and the regulatory community;
- Appearing before congressional panels as part of topical hearings and briefings;
- Preparing client testimony before congressional committees; and
- Working with the media to help develop print and broadcast reports on client-related issues.

Alston & Bird distinguishes itself from its competitors by utilizing the firm's vast resources at its disposal and implementing strategies through its team approach incorporating our policy, political, procedural and substantive experts. We regularly partner with public relations firms or other consultants with extensive bipartisan experience who communicate with government officials and manage high-profile corporate and political issues on behalf of our clients. Together, we are able to develop messages and build and sustain momentum for your issues, as well as create a network of visible and influential supporters. We differentiate ourselves from competitors by offering the following:

- Facilitating meetings and advocating client interests and issues with policymakers, working closely with administration officials, members of Congress and their staffs, and the regulatory and enforcement agencies;
- Substantive advice and expertise in a multitude of disciplines including policy, tax, and privacy and data security expertise;
- Creation of opportunities to connect with a number of key influencers in both the Republican and Democratic parties;
- Preparing client testimony before congressional committees and appearing as witnesses on their behalf;
- Ability to act quickly before critical congressional action on pension fund related legislation;
- Developing grass-top and grass-root efforts throughout the country to marshal public support on behalf of clients' state and federal legislative, and regulatory initiatives.
- Managing and coordinating strategic and tactical crises; and

- Developing and implementing strategies to manage and minimize risks to financial assets, business markets and reputation.

Alston & Bird has successfully assisted clients across various industries in achieving their legislative and policy goals. Examples of our representative experience include:

- **California Family Health Council (CFHC):** Work with senior staff to identify legislative and administrative priorities and advocate on identified issues in the California Legislature. Worked on legislation to modify the scope of practice for registered nurses in the clinic setting and continue to work with the California Department of Health Care Services in maintaining existing state sponsored health programs.
- **Public Health Institute (PHI):** Provide legislative advocacy focused on public health in California. Work closely with senior staff to assist PHI in building and maintaining relationships with key staff and policy makers in Sacramento. Worked on legislation to maintain the California Cancer Registry and continue to work with them on contracting issues with the State Department of Public Health.
- **Alliance of Automobile Manufacturers:** Work with member companies, engineering technical staff as well as government relations staff, to develop legislative and regulatory advocacy positions in proposed legislation and regulation in California. Develop testimony and presentation strategies. Draft all written materials to support same.
- **Navistar International Corporation:** Work closely with Navistar's senior management to assist the company in its outreach on energy, transportation, and pension policy before the Congress, the Administration, the Environmental Protection Agency and other federal agencies. We work with Navistar's global government relations team and key US policymakers to address proposed Colombian heavy duty truck emissions regulations that would end the importation into the country of engines built to US EPA emissions standards.
- **Safeway, Inc.:** Counseled Safeway in its efforts to build and maintain active, substantive relationships with key policymakers in Washington, and provided advice on a range of legislative and regulatory issues impacting Safeway both as a grocer and as an employer. We provided strategic advice during the health care reform debate, and our advice and counsel have helped Safeway contribute productively to the policy debates surrounding climate change, derivatives reform and food safety.
- **Riverside Charitable Corporation:** Provide legislative and public policy counsel concerning issues with the BOE and County Tax Assessors which may require legislative fixes that will then tap into our relationships with elected officials.
- **Mosquito and Vector Control Association of California:** assist in the area of regulatory affairs, particularly related to requirements of the Clean Water Act and CEQA.
- **Property ID:** Provide legislative advocacy services to natural hazard disclosure company on wide range of real estate transaction, land use and natural resource law issues.
- **Nike:** Develop model legislative language and strategies for adoption on issues of sustainability in manufacturing in California, Oregon, Washington and federally.
- **Boeing:** Provide political and public outreach strategy counseling.

## Assigned Professionals

### Project Lead – Maureen Gorsen

Located in our Sacramento office, Ms. Gorsen previously served as the former General Counsel of the California Environmental Protection Agency and the California Natural Resources Agency. She was also the former Director of the California Department of Toxic Substances Control. With 24 years in and out of government, she provides strategic public policy, legislative and regulatory advocacy and counsel to a wide range of industry associations, product manufacturers, agricultural, industrial facilities and landowners before all legislative and executive branch agencies. She represents clients in enforcement defense and regulatory

compliance issues before legislative and executive branch policymakers, and provides permit and compliance issues on environmental issues in the Sacramento and in state capitols across the nation.

She develops strategies for regulatory and permit compliance for environmental, financial, tax, product and supply chain regulation issues. She defends clients in federal and state enforcement actions including hazardous waste, stormwater, air quality, AB 32, Prop 65, and business and tax regulation. Ms. Gorsen also assists clients in developing corporate policies to meet sustainability, supply chain, anti-slavery and human trafficking and conflict minerals statutes.

### **Dominique Shelton**

Dominique Shelton is a partner on Alston & Bird's Technology & Privacy Team. She is located in the Los Angeles office. She focuses her practice on privacy, data security and unfair competition. Dominique provides strategic privacy and cyber preparedness compliance counseling on cutting-edge issues such as security, mobile apps, Internet of Things, the Video Privacy Protection Act, Big Data, digital marketing and the cloud. She also leads data breach investigations, defends regulatory actions and provides subject-matter leadership in privacy consumer as well as business to business class action litigation. In 2012, she was named Intellectual Property Lawyer of the Year by the Century City Bar Association. In 2014, she was named one of the Most Influential Lawyers: Digital Media and E-Commerce Law by the Los Angeles Business Journal. In 2014, The Recorder named her as a Leader in Technology Law. In 2015, the Los Angeles Business Journal named her one of the Most Influential Lawyers in White Collar & Cyber Crimes Law. She has also been listed in the 2016 and 2017 editions of The Best Lawyers in America® in the area of Privacy and Data Security Law.

She has litigated privacy and data security matters and has negotiated with regulators such as the California AG and FTC.

Dominique represents Fortune 500 companies, startups and privately held companies across a broad spectrum of industries, including entertainment, health care, finance, digital advertising, retail and telecommunications.

### **Kathleen Hill**

Kathleen Hill is a planning director who works closely with attorneys and clients on a range of land use planning, building permits, wireless telecommunication facilities, California Environmental Quality Act (CEQA) compliance and related entitlement matters.

Kathleen has more than 25 years of experience in planning, real estate development and project management. She previously worked as a site development manager in the wireless telecommunications industry, where she acquired real estate suitable for the development of antenna facilities, prepared and processed entitlement applications and negotiated approvals with public agencies throughout Southern California. Her public sector land use experience includes working as an associate planner for the cities of Riverside and Perris. Kathleen has also worked as a planning consultant on residential and commercial projects, tentative maps, zoning code amendments, specific plans and the City of Indio General Plan Update.

### **John Kabateck**

John Kabateck has nearly twenty-five years of leadership with strategic coalition development and implementation in California's public policy and political arenas, with an emphasis on the full spectrum of business and employment issues. As a premier player in Sacramento and California public policy and advocacy, John helps clients to become more relevant, involved and impactful through strategic positioning and public affairs strategies.

John is the former California Executive Director of the National Federation of Independent Business, and the lead lobbyist on behalf of NFIB's 22,000 California business members. John led the organization's successful efforts to protect small businesses from higher taxes, including split roll/Prop 13 reform, frivolous "shakedown" lawsuits, and burdensome regulations, in the California Legislature, in the executive branch and at the ballot. Specifically, he worked to advance issues on health care, pensions, retirement, environmental and other issues, including a leading role in working with Senator President pro Tem Kevin De Leon to support and advance legislation to allow for employer-driven retirement contributions.

John was also the former Senior Legislative Director and Vice President of the California Restaurant Association, developing and implementing successful public affairs and advocacy efforts on labor, tax and employee benefits issues.

John previously served as Chief of Staff in the California State Assembly and as Director of Coalitions for Governor Pete Wilson's successful re-election campaign and as Wilson's Chief Deputy Appointments Secretary, where he was responsible for full-time and board/commission appointments spanning more than eight state agencies, including the Business, Transportation and Housing Agency and Trade and Commerce Agency. More recently, he was selected by Governor Schwarzenegger to serve as Director of External Affairs, to manage the Governor's statewide offices and coalitions across business, local government and ethnic communities to achieve the Governor's policy and legislative goals.

### **David Godofsky**

David has a multidisciplinary practice that is unique in the United States. His ability to integrate legal analysis with cost, funding, administration and benefit design considerations is informed by his education and years of experience as an actuary and consultant. David is a Fellow of the Society of Actuaries, an Enrolled Actuary, a former director of the Conference of Consulting Actuaries, and former vice chairman of the Education & Examination Committee of the Society of Actuaries.

He currently serves as Chairman of a committee of the Actuarial Standards Board, and on the program committee of the Enrolled Actuaries Meeting. In response to his comment letters, the U.S. Department of the Treasury corrected an error in pension funding regulations and changed the rules for determining whether cash balance plans satisfy the backloading requirements.

Before joining Alston & Bird, David spent 18 years designing, implementing and administering employee benefit plans, determining costs, and helping employers control costs and get the most for their employee benefits budgets. His clients seek his advice for practical, workable solutions to complex problems, and the ability to make highly technical concepts understandable to executives, employees, judges and arbitrators.

### **S. Fahad Saghir**

Fahad's practice is focused on a variety of employee benefits issues facing clients, including plan design, qualification, nondiscrimination, funding and benefit restriction rules under the Code and ERISA. Mr. Saghir also advises clients on correcting plan errors under the IRS Employee Plans Compliance Resolution System.

Mr. Saghir brings exceptional experience to his ERISA practice. He is an associate of the Society of Actuaries and, prior to joining Alston & Bird, spent five years working as an actuarial consultant, performing actuarial calculations for qualified retirement plans and advising clients on accounting expense, contribution requirements, costing for plan design changes and assisting clients in selecting employee benefit plans by balancing their human resource goals and budgetary considerations.

### **Meredith Gage**

Meredith's practice focuses on the design and ongoing compliance of qualified and nonqualified deferred compensation plans as well as health and welfare plans for both employers and service providers. She also provides advice on a variety of employee benefits matters, including executive compensation matters, arising in mergers and acquisitions.

### **Carolyn Smith**

Carolyn adds depth of experience, including knowledge of substance, policy, and the legislative process and expertise in drafting legislative language.

Clients count on Carolyn's unique policy and legal background for strategic planning, advocacy and compliance advice on complex tax, health and employee benefit issues. She has 20 years of experience with the Congressional Joint Committee on Taxation, where she was the associate deputy chief of staff and counseled members and staff of the House Ways and Means and Senate Finance Committees.

**Earl Pomeroy**

As a former Member of Congress known for working across the aisle, Earl is particularly well-versed in strategy development and has the ability to communicate one-on-one in the way best understood by elected officials and senior staff. His private practice draws on the issues he was closest to as a policy maker.

Earl's 18 years as a Member of Congress and experience as state insurance commissioner and president of NAIC provide an exceptionally strong background for his work in public policy advocacy. He assists clients with complex policy issues before the legislative and executive branches of government.

**References****Scripps Networks**

(Assisted Scripps with monitoring, analysis and advocacy on national and California legislation pertaining to privacy and cybersecurity.)

Leslie Shanklin/Vice President of Business and Legal Affairs  
5425 Wisconsin Avenue, Suite 500  
Chevy Chase MD, 20815  
301.244.7629 | [lshanklin@scrippsnetworks.com](mailto:lshanklin@scrippsnetworks.com)

**Cradle to Cradle Product Innovation Institute**

(Led Sacramento-based public affairs and legislative advocacy team providing monitoring, analysis and advocacy on proposed legislation affecting chemical ingredient use and disclosure, extended producer responsibility and product sales and regulation.)

Bridgett Luther/Founder and former President  
104 Divisadero Street  
San Francisco, CA 94117  
415.385.3399 | [bridgett.luther@gmail.com](mailto:bridgett.luther@gmail.com)

**National Federation of Independent Business**

(For eight years, we managed two legislative/lobbying staff, as well as a contract lobbyist, on behalf of 21,000 small business members. We established legislative agenda and priorities for organization, advocacy in legislative committees, offices and executive branch, and mobilizing members for aggressive grassroots advocacy efforts. Issues included advocacy leading to legislative approval of employer-driven retirement plans for employees, as well as various tax, regulatory and legal issues for small business members.)

Steve Woods/Senior Vice President of State Public Policy  
1201 F Street, NW, Suite 200  
Washington, DC 20004  
202.554.9000 | [Steve.woods@nfib.org](mailto:Steve.woods@nfib.org)

**California Restaurant Association (CRA)**

(As Senior Legislative Director, served as a lead lobbyist for CRA on various workforce issues, including wage and hour, employee-employer relations, and labor. Efforts involved regular testimony in Capitol committees, meetings with staff, consultants and third house leaders, and spearheading discussions and advocacy efforts with larger business community (employee leave, workers' comp). Involved regular monitoring and prioritization of legislation affecting CRA members, and engagement of members to communicate with legislators in Sacramento and within the districts.

Jot Condie/President & CEO  
621 Capitol Mall, Suite 2000  
Sacramento, CA 95814  
916.447.5793 | [jcondie@calrest.org](mailto:jcondie@calrest.org)

## **Fees, Costs, Billing Practices, and Payment Terms**

While Alston & Bird attorneys typically bill clients on an hourly basis, our experience has shown that for public policy and trade association clients, a retainer fee arrangement is generally more effective. Under such an arrangement, a capped annual fee for our services is set with the client and billed on a monthly basis over 12 months. This provides our clients with a consistent monthly cost for budgeting purposes even though the level of activity will vary widely during the course of the year.

A number of factors are considered in setting the appropriate annual retainer fee for legislative and other public policy initiatives, including the policy objective to be achieved, the governmental entities with which we would be required to work, the cost of subcontractors needed, and the Alston & Bird policy professionals who would comprise the team to promote the client's agenda.

Based on the range of services outlined above and the information we have available, we propose a monthly retainer of \$10,000 per month depending on the nature of the work and the level of services to be provided. We would issue monthly statements for our state legislative and regulatory public policy services rendered in the previous month. These statements would include, where appropriate, charges for related expenses and services such as travel, catering, etc. to the extent required for a particular assignment.

In addition to the monthly retainer for regulatory and legislative affairs services, we would charge for certain expenses. We do not charge for word processing and telephone charges, however, we do charge for costs and expenses commonly incurred, such as messenger and other delivery fees, postage, travel expenses, photocopying and other reproduction costs, facsimile costs, charges for computer time and other similar items. Other charges that may be incurred include court reporter's fees, filing fees, deposition and transcript fees and expenses imposed by courts and administrative agencies.

We charge for our travel time at our normal rates unless we are able to perform other client work while in transit, which we will endeavor to do wherever possible. In addition, we charge for our actual travel costs (for domestic flights, coach fare only, unless you authorize upgraded travel, plus reasonable meal and lodging charges). Our current charge for in-office photocopying is \$0.11/page; and mileage is charged at the approved IRS rate, which currently is \$0.535/mile.

## **Conflicts of Interest**

LACERA is a current client of the firm. We are not aware of any conflicts and at this point in time do not anticipate any positional conflicts on issues that are involved in this RFP.

## **Claims**

To our knowledge there have been no administrative, ethics, or disciplinary investigations or other proceedings or claims against any of the professionals proposed to provide services to LACERA nor against the firm arising from the conduct of any of those professionals.

The firm has been and is involved in litigation in the ordinary course of our business arising out of our provision of legal services. None of these suits were or are material to our financial condition, and all were and are well within the scope of the firm's insurance coverage. It is our policy not to discuss these matters.



## Insurance



January 3, 2017

Alston & Bird LLP  
1201 West Peachtree Street  
One Atlantic Center  
Atlanta, GA 30309-3424

To Whom It May Concern:

### CONFIRMATION OF INSURANCE

We hereby confirm that Alston & Bird LLP has Professional Liability Coverage under Policy ALA#1785 with an annual limit of \$50,000,000 per claim and \$100,000,000 in the aggregate with the right, under stated conditions, to purchase extended reporting rights upon termination of such Policy by ALAS.

The self-insured retention under such Policy is \$2,000,000 each claim up to an aggregate of \$4,000,000 and \$100,000 each claim thereafter.

The Policy effective date is from January 1, 2017 to January 1, 2018.

Such Policy is subject to the terms, conditions, limitations and exclusions stated therein.

**ATTORNEYS' LIABILITY ASSURANCE SOCIETY, INC.,  
A RISK RETENTION GROUP**

By: *Nancy J. Montroy* Date: 1/3/2017

Nancy J. Montroy  
Vice President - Director of Underwriting

311 S. Wacker Drive, Suite 5700  
Chicago, IL 60606-6629  
tel: 312.697.6900  
fax: 312.697.6901

[alas.com](http://alas.com)

## Samples of Written Work

[Employee Benefits & Executive Compensation Advisory: The American Health Care Act Moves Forward: What Employers Need to Know About the House-Passed Bill](#)

[Employee Benefits & P Executive Compensation: Qualified Retirement Plan Amendments and IRS Filings — Upcoming Deadlines](#)

[Life in Plastic Could Be Fantastic: Considerations for the Use of Electronic Payment Cards to Pay Pension Benefits](#)

[Trump's Employment Agenda Remains Murky](#)

American Benefits Council/Pomeroy Perspectives: Winning the War on the Cadillac Tax - For Now  
*(The content of this article is provided in the hard copy materials)*

[American Benefits Council/Pomeroy Perspectives: Behind the Scenes in Congress, Interview with Representative John Kline](#)

## An Overview of Alston & Bird

We understand that our most fundamental responsibility to Los Angeles County Employees Retirement Association (LACERA) is to provide **extraordinary service**. We seek to forge a strong relationship with you by **listening**. In our experience, the most fundamental building block of the client-attorney relationship is **understanding the client's business**. To this end, Alston & Bird will develop a dedicated client team for Los Angeles County Employees Retirement Association (LACERA) and include the core team of attorneys working across the range of services the firm provides you. These team members will appreciate your **culture and values**, as well as the strategies and objectives of your company, and will be committed to learning the ins and outs of your business, providing you with the most comprehensive counsel to bring your business goals to fruition.

The fundamental tenets of the Los Angeles County Employees Retirement Association (LACERA) Alston & Bird Client Service Team include:

**Your goals are our goals.** With our client team program, your goals are our goals, and your successes are our successes. Having our team meet regularly will build our attorneys' knowledge of your environment and the markets in which Los Angeles County Employees Retirement Association (LACERA) operates. This will allow us to have an eye on the bigger picture of helping you achieve your ultimate business goals.

**Assess. Prioritize. Act.** You expect legal counsel to understand your business; to assess the impact of legal issues affecting the business; and to work with the legal and business teams to develop a strategy. And to do this before we act. We pledge to do exactly that.

**We are all "one team."** With a dedicated client team, the relationship naturally works both ways. You as the client are encouraged to be an active part of the team, and your voice and participation is a welcomed part of the process. We will schedule regular meetings with all relevant parties to ensure we all stay connected and are on top of any potential obstacles or issues as they develop.

### Credentials

Independent rankings confirm our attorneys' experience and skills. *The Best Lawyers in America*<sup>®</sup> 2017 features 160 Alston & Bird attorneys. Similarly, in the 2016 edition of *Chambers USA: America's Leading Lawyers for Business*, nine Alston & Bird state practices are ranked in Band 1. They include: Antitrust, Bankruptcy/Restructuring, Corporate/M&A, Health Care, Labor & Employment, Litigation: General Commercial, Real Estate, Intellectual Property and Tax. Eighty-two of our attorneys are included in the publication's distinguished rankings. Alston & Bird was also singled out by *CTA Intelligence* as the top firm for client service to the investment funds industry. In addition to being recognized as the "Best Law Firm - Client Service," the firm was also a finalist for "Best Law Firm - Overall." For the sixth consecutive year, Alston & Bird has been identified by BTI Consulting Group as one of a small number of firms that general counsel are willing to bet their reputation on and recommend to their peers. In its 2016 study—*Most Recommended Law Firms*—BTI identifies Alston & Bird as one of only 25 firms that have consistently won general counsel endorsements out of the 650 core law firms serving large and Fortune 1000 clients.

### Firm Culture

Alston & Bird's unique culture and core values have been nurtured for more than a century. They define who we are and how we interact with our clients and with each other. From the founding of the firm in the late 1800s, collegiality, teamwork, loyalty, diversity, individual satisfaction, fairness and professional development are the guiding principles and values by which we measure ourselves. Our culture is the underpinning for our diverse practice capabilities, the complementary structure of our 11 offices and our successes to date.

Our commitment to firm culture has differentiated us for years. Alston & Bird has been ranked by *Fortune* magazine as one of the country's "100 Best Companies to Work For" for the past 18 years, the only law firm to earn this honor every year since 1999. We were also one of only five law firms recognized by *Fortune* as one of the country's "100 Best Workplaces for Women", and were also recognized by *Fortune* as one of the country's "50 Best Workplaces for Diversity" in 2016. In the 2016 *Vault Guide to the Top 100 Law Firms*, Alston & Bird ranked 17th in the nation for overall diversity, 16th for minorities, 20th for women and 23rd for LGBT. Alston & Bird also received a top rating of 100 percent from the Human Rights Campaign's (HRC)

2017 Corporate Equality Index. This is the 13th year in a row Alston & Bird has received the HRC's perfect rating.

## **Diversity**

Alston & Bird is committed to promoting diversity both within our firm and our community. We have worked and will continue to work to create and maintain an open, receptive and nurturing work environment and a diverse workforce of attorneys and staff. We accomplish this internally through various initiatives, including increasing our emphasis on and resources toward hiring and retaining top talent, and in particular women and people of color; providing more support systems and flexible alternatives that create a welcoming environment for all minority groups; and providing appropriate mentoring to all minority lawyers to ensure their continued success at the firm and in their legal careers.

## **Sustainability**

Sustainability is an integral part of Alston & Bird's culture and a core element of its corporate responsibility programs. While sustainability involves improving efficiencies and reducing our environmental footprint, it also encompasses more broadly our firm's relationship with its people and communities, and our collective role in maintaining the long-term viability of both.

Alston & Bird's firmwide Sustainability Committee provides leadership, structure and accountability to our environmental initiatives. The committee oversees firm policies and practices designed to reduce our footprint on the environment, promotes initiatives that have a positive impact on our local and global communities and provides a platform for communication between attorneys and staff regarding these critical issues.

## **Pro Bono & Community Service**

At Alston & Bird we've been volunteering and giving back to the community since the founding of the firm in 1893. Our volunteers continuously look for ways to make a difference in our local communities. The firm has a full-time dedicated Director of Pro Bono and Community Service as well as a Pro Bono Committee comprised of attorneys, paralegals and staff members from every office. This group oversees, promotes and leads pro bono and community service activities firm-wide.

## **Technology**

We enjoy a national reputation for our ability to provide and use technology, receiving recognition for those efforts as far back as 1998, when *The American Lawyer* in its first technology survey of AmLaw 100 firms ranked Alston & Bird tied for first place for the effective use of technology applications.

Alston & Bird clients and employees have long enjoyed access to high-end technology tools. Our lawyers all have laptops and smartphones or BlackBerries with systems that allow easy remote tie-ins to the firm intranet, document management system and emails. We frequently work with systems clients already have in place and regularly use electronic billing, and we maintain four principal technology teams centered on client-related and firm needs. Our Practice Innovation Team helps design technology solutions for client and lawyer issues. Our Knowledge Management Team develops ways of exploiting the vast store of work product available within the firm. Our Case Support Team, as part of the Alston & Bird Special Resources Group, supports our litigators in the management of documents and provides technical assistance at trial. Finally, our in-house Technology Group, which includes our award-winning Help Desk, provides infrastructure and support to all.

## **Leadership**

We enjoy a rich history of individuals forming the fabric of the firm. From past partner and legendary golfer Bobby Jones to current special counsel and former Senate Majority Leader Bob Dole, Alston & Bird is proud of its many members who serve as leaders in their fields and the community. Among our partners are many who served in significant positions with federal agencies, including the Justice Department, State Department, Treasury Department, Internal Revenue Service and Environmental Protection Agency. Attorneys who previously worked at Alston & Bird now serve on state and federal benches.

## Employee Benefits & Executive Compensation Practice

At Alston & Bird, we have a unique multidisciplinary and multifaceted approach to our clients' most complex and important challenges in employee benefits and executive compensation. We represent both employers and providers, and we have deep specialties in qualified plans, health and welfare, executive compensation, 409A, actuarial issues, congressional relations, agency relations (PBGC, IRS and DOL) and ERISA litigation. Our attorneys work together as a team, bringing to bear multiple specialties for each client, which enables us to achieve superior results for clients on significant matters while being efficient with routine questions. Our clients often engage us to handle employee benefits, executive compensation and ERISA aspects of important transactions and litigation even when other firms serve as lead counsel on the overall matter. We routinely represent clients in bet-the-company matters, including federal agency investigations, corporate transactions and litigation.

In addition to 26 national and 77 metropolitan tier-one rankings, *Best Lawyers* 2017 named Alston & Bird "Law Firm of the Year" in Employee Benefits (ERISA) Law for the second time in three years. The firm also was honored as "Law Firm of the Year" in ERISA Litigation in last year's edition of "Best Law Firms." Alston & Bird's ERISA Litigation Group has been ranked Tier One in National—ERISA Litigation by *Best Lawyers* every year since 2012.

Our employee benefits and executive compensation lawyers are grouped in four practice areas: tax-qualified retirement and savings plans, executive compensation, health and welfare plans and ERISA litigation. Each lawyer in our group focuses his or her practice in one of these four areas. The breadth, depth and focus of our practice allow us to provide solutions to complex problems quickly and efficiently.

### ***Health and Welfare Plans***

Congress, U.S. federal agencies and states have promulgated an ever-increasing flood of new rules and regulations governing employer-sponsored health and welfare (H&W) plans. Employers and plan administrators struggle to "know the law" and properly apply it as it develops. Our H&W practice provides the advice and practical know-how necessary to ensure ongoing compliance and avoid potential liability.

Alston & Bird was one of the first firms to recognize and act upon the need for focused health and welfare benefits expertise. John Hickman leads an experienced core of attorneys devoted to assisting clients with health and welfare benefit issues. Members of the H&W practice have attained national recognition through publishing, lecturing and day-to-day client representation.

In addition to serving as special benefits counsel for H&W matters for several Fortune 100 firms, Alston & Bird H&W members serve as counsel to benefit trade associations and interact on a daily basis with key regulatory agencies (e.g., IRS, DOL and HHS).

In addition to technical expertise, we understand the human element of administering health and welfare benefits. Our nationwide clients benefit from regular newsletter and email updates and attend monthly client discussion group teleconferences and meetings. With Alston & Bird, answers to complex health and welfare compliance issues are never more than a phone call away.

On a daily basis, we advise our clients in connection with the following:

### ***Plan Design and Compliance***

- 401(k) plans
- ESOPs
- Traditional pension plans
- Cash balance and pension equity plans

### ***Complex Audits and Self Audits***

- IRS, DOL and PBGC audits
- Compliance self-reviews
- CAP, VCR and SVP

## ***Mergers and Acquisitions***

- Due diligence
- Structuring covenants
- Solving complex plan transitions

## ***Fiduciary Advice***

- Plan investment advice to plan sponsors
- Advice to investment advisors
- DOL-prohibited transaction exemptions

## State and Local Tax Practice

Alston & Bird has one of the largest and most acclaimed law firm tax practices in the United States, providing unparalleled coverage in state and local taxation and unclaimed property, as well as the broad range of cutting-edge tax issues that companies of any size and geographic breadth face. Our firm has earned national recognition as a leader in legal skills and client service, and our international client base benefits from our focus on excellence and integrity. Our clients appreciate our sophisticated, comprehensive SALT services and our demonstrated commitment to our clients' long-term financial and business goals. We maintain strong working relationships with state tax administrators, giving us added insight.

Our coast-to-coast team advises clients on issues in all 50 states, and we cover the gamut of issues including the full range of taxes and levies. Our extensive expertise covers income taxes, sales and use taxes, property taxes and other levies, such as franchise, excise, recording, premium and self-procurement, license, real estate transfer and recording taxes.

The deep bench strength and broad national experience of our SALT Group distinguishes Alston & Bird from other accounting and law firms. Alston & Bird has handled complex multistate issues and has represented clients in state and local tax matters in almost every state. The composition of our group ensures that experienced lawyers will assist you with your tax matters. In addition, we are at the forefront of trends and changes impacting the state and local tax landscape, writing numerous advisories and articles and speaking at national tax conferences and symposia on a variety of issues and topics.

### **Multistate Tax Controversy and Litigation**

Tax litigation is a highly technical and specialized area of legal practice. Unlike many firms, we do not rely on general litigators. Instead, we have developed a team of true tax litigators who have extensive substantive experience in income, estate, gift and employment taxes. Our controversy specialists combine knowledge of substantive tax law and the complex procedural options to effectively defend client positions through written and oral advocacy.

Alston & Bird has achieved favorable results for clients in all phases of a tax dispute, and at all levels of the court system including audits, administrative appeals, trial and appellate. We have also successfully assisted with mediation for both docketed and non-docketed cases.

Many of the cases we have managed were favorably resolved by settlement without having to try the case, but we have and will litigate the case when an acceptable settlement has not been attainable. In addition, the group is well-versed in alternative dispute resolution, utilizing both mediation and arbitration when in the best interest of our client.

We find that we often can provide greatest value by overseeing a client's issues across multiple state and local jurisdictions. We are prepared to coordinate a client's multistate audit, appeals and litigation strategy with an eye toward the varying positions taken by other jurisdictions, differences in each jurisdiction's applicable tax laws and diverse administrative practices and forum considerations. Client issues with respect to which we have served as multistate counsel include business/nonbusiness income, apportionment methodologies, composition of the unitary group and nexus.

We typically handle our clients' initial administrative appeals and any subsequent court actions. The fact that we are able to assist our clients at both levels ensures the best possible settlement. When our lawyers, who are prepared to take the case to the next level, make a strong argument at the administrative stage, the taxing authorities have every incentive to settle the case favorably at an early stage. If we are unable to resolve the matter favorably, we will pursue the appeal vigorously.

## Tax Policy & Regulation

Our clients grapple daily with the intricacies of the tax laws and how an ever-changing tax legislative and regulatory climate affects their business. We combine our political policy and substantive legal experience to provide the highest level of advice and support on federal tax policy and regulatory issues.

Our tax policy and regulatory team is experienced across a full range of efforts, including representing formal and ad hoc coalitions, trade associations and individual companies before Congress and the Administration. Our practice is anchored by two former congressional tax committee leaders—Senate Majority Leader and Finance Committee Chairman **Sen. Bob Dole** and Congressman and Ways and Means Committee Member **Hon. Earl Pomeroy**. These congressional tax writers are joined by **Carolyn Smith**, who brings more than 20 years of experience in the formulation of tax policy as the former associate deputy chief of staff of the Joint Committee on Taxation. Other members of our group include former staff and officials of the Ways and Means and Finance Committees, White House, IRS and Treasury, supported by deeply experienced and highly technical tax lawyers.

The team is joined by numerous other former senior officials from every administration in the last four decades, with service in the White House, both houses of Congress, Treasury and IRS. The group is supported by deeply experienced technical tax lawyers with decades of knowledge across the full range of federal tax issues, as well as international and transfer pricing tax matters, international tax, REITs and real estate, and investment funds.

### Accolades

- *Chambers USA* has ranked our Legislative & Public Policy group in the top tier of firms for government relations every year since 2009, as has The Center for Responsive Politics' outlet Opensecrets.org.
- *The National Law Journal* regularly ranks Alston & Bird among the top 20 lobbying firms.
- *Roll Call* named Alston & Bird among the top 12 lobbying firms in the nation.
- *National Public Radio* has ranked us "one of the top lobbying firms in D.C."
- *The Washington Business Journal* ranks us among the top 12 for all lobbying firms.

Tax reform, deficit reduction, and the extension of expiring tax provisions are ongoing issues in the Congress. We position our clients to stay ahead of developments and are proactive on both positive and defensive strategies—whether seeking to retain favorable tax provisions, seeking modifications in current policies or defending against proposals that would impose additional tax burdens.

The Affordable Care Act imposes billions of dollars of new taxes relating to the provision of health care. We have represented clients on a variety of tax issues arising during the consideration of the Act and regulatory implementation efforts to date, including the following:

- We were successful in efforts to structure the tax on medical devices in a manner advocated by our clients, including statutory exemption from the tax for certain products.
- Initial proposals during consideration of the Act would have eliminated the tax exclusion for flexible spending accounts. Working with an ad hoc coalition, favorable tax treatment for such accounts was preserved, enabling millions of Americans to continue to be able to use such accounts to pay for medical expenses.
- Working with an organization with over 1,000 member companies representing third-party administrators, retailers and payment processors, we obtained a reversal of an IRS ruling that, if implemented, would have prohibited the use of payment cards to process many health benefit plan transactions. As a result of these efforts, the ability to continue to use payment cards was preserved.
- In the international tax arena, our efforts include working with key clients on successful legislative and regulatory proposals regarding advance pricing agreements, IRS withholding tax regulations and tax treaties matters.
- We advise investor groups on tax legislative and regulatory matters, providing high-level information to assist our clients in the appropriate targeting of investments.



## Biographies

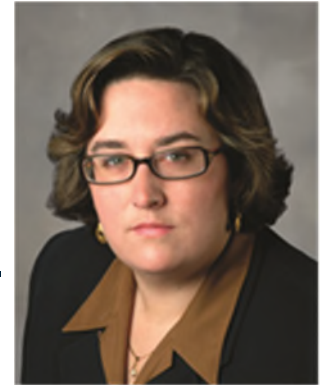
## Maureen F. Gorsen

### Partner

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Environmental Litigation | Environment, Land Use & Natural Resources | Environmental Compliance, Permitting & Transactions | Legislative & Public Policy | Environmental Enforcement Defense | Chemical & Product Regulation | Proposition 65 | Climate Change / Carbon Management | Consumer Product Safety & Regulatory Compliance | Pesticide Law and Regulation, Enforcement and Registration | Corporate Social Responsibility & Sustainability | China Business Team (CBT) | CBT - Green Chemistry, Chemical and Product Regulation | Government & Economic Incentives | Air Quality | Brownfield Contaminated Sites | Hazardous Materials & Hazardous Waste Compliance | International | Coastal Land Use | Agribusiness

Located in Sacramento, Maureen Gorsen focuses on public policy advocacy and regulatory compliance, combining legislative, litigation and regulatory advocacy to achieve her clients' business objectives. She develops strategies for regulatory and permit compliance for environmental, financial, tax, product and supply chain regulation issues. She defends clients in federal and state enforcement actions including hazardous waste, stormwater, air quality, AB 32, Prop 65, and business and tax regulation

Ms. Gorsen is the former director of the California DTSC, where she directed regulation of waste, soil and water cleanups under CERCLA, RCRA, and brownfields laws.

Ms. Gorsen is the former general counsel of the California Environmental Protection Agency, as well as the former general counsel for the California Natural Resources Agency. In these roles, she oversaw policies to implement and enforce California's environmental laws, including Prop 65, the Endangered Species Act, Coastal Act and CEQA.

She has been ranked in *U.S. News and World Report's Best Lawyers®* since 2013.

#### **Representative Experience**

- Regulatory advocacy on low carbon fuel standards and cap and trade regulation amendments before the California Air Resources Board.
- Public policy advocacy on behalf of the automobile industry regarding regulation of automobile components by CalEPA.
- Successfully settled an EPA enforcement action against a client's former subsidiary for hazardous waste violations at its facility in Union City, California, reducing the initial multimillion-dollar penalty request to \$120,000.
- Represented a client against violations of the RCRA and Clean Water Act in connection with the client's chemical plant in Pittsburg, CA. Negotiations regarding the alleged surface water discharge and waste handling issues resulted in a \$40,000 settlement.
- Developed litigation and regulatory advocacy strategy for a client and successfully suppressed new biological and genetic testing regulations by a state agency.
- Successful litigation in appellate court against the California Department of Fish and Wildlife for administrative law violations.
- Amicus brief on behalf of the California Manufacturers and Technology Association challenging the auction component of the California cap and trade rules under AB 32.

- Represent aerospace parts manufacturers, food processors and hospitals before CARB on allowance allocations under AB 32.
- Advise clients on the EPA's TSCA chemical data reporting rule.
- Prepare web, document and product label disclosures under SB 657 and related human trafficking, conflict minerals and supply chain legal requirements.
- Advise clients on Prop 65 compliance.
- Advised a client on green chemistry issues affecting their LEED green building certification regarding indoor air quality.
- Secured for a client regulatory approvals for the residential use of a fully constructed mixed-use project in Oakland that was previously the subject of underground storage tank removals, remediation and soil excavation.
- Developed regulatory and media advocacy strategy for a client and successfully obtained repeal of onerous NPDES permit conditions.
- Successfully settle large multijurisdictional cases alleging improper labeling, packaging and disposal of consumer products.
- Provide legal memoranda and opinion on eligibility of projects and products under the renewable portfolio standard, rechargeable energy efficiency standards and carbon allowances under AB 32.

## **Publications**

- "Practitioner Insights: California Crowdsources Chemical Rules: What Could Go Wrong?," *Bloomberg BNA Chemical Regulation Reporter*, May 22, 2017.
- "Practitioner Insights: California Crowdsources Chemical Rules: What Could Go Wrong?," *Bloomberg BNA Daily Environment Report*, May 16, 2017.
- "Is Your Company Ready for the U.K. Modern Slavery Act?," *Corporate Counsel*, July 29, 2016.
- "Ready for Vermont's GMO Label Law?," *Food Processing*, May 2016.
- "An Attack on Slavery," *CFO*, December 2015.
- "Expert Analysis: UK Holds Companies Responsible for Slavery in Supply Chain," *The Asian Lawyer*, September 18, 2015.
- "UK Follows California's Lead in Holding Companies Responsible for Slavery in Supply Chain," *Supply & Demand Chain Executive*, August 12, 2015.
- "UK Follows California's Lead in Holding Companies Responsible for Slavery in Supply Chain," *Industry Today*, August 12, 2015.
- "Manufacturers Target of Proposed State Chemical Safety Rules," *IndustryWeek*, March 17, 2015.
- "Alameda County's Drug Take-Back Ordinance," *Industry Today*, October 22, 2014.
- "The Clean Power Plan: Changes Ahead for Coal, Electricity," *FierceEnergy*, August 19, 2014.
- "Get Ready for Calif.'s New Stormwater Permit Regime," *Law360*, August 18, 2014.
- "Greenhouse Gas Reporting Rules: Current Headaches and Future Migraines," *Toxics Law Reporter*, July 17, 2014.
- "With Backloading on Track, What Lies Ahead for the EU Emissions Trading System?," *International Environment Reporter*, September 25, 2013.
- "Bipartisan Compromise Will Strengthen Chemical Safety Laws," *The Hill's Congress Blog*, September 18, 2013.
- "What You Need to Know About California's New Consumer Products Law," *GreenBiz.com*, September 9, 2013.

- “How Much of What You Know About EU REACH Will Help You Comply With K-REACH? What Else Do You Need to Know?,” *International Environment Reporter*, July 17, 2013.
- “Compare Pollution Burdens Across California,” *Daily Journal*, May 16, 2013.
- “Coming Soon: Manufacturer EPR Requirements,” *U.S. Tech*, April 2013.
- “2013: Time to Prepare for Compliance with CA’s Safer Consumer Product Regulations,” *Environmental Leader*, February 27, 2013.
- “Look Before You Leap,” *The Recorder*, Vol. 136, No. 52, December 24, 2012.
- “PRIA 3 May Have Hidden Disadvantages for Industry,” *Law360*, November 8, 2012.
- “OTC Crunch Time in California,” *Pharmaceutical Executive*, November 1, 2012.
- “What Do Product Sellers Need to Know About Ingredients in Their Products? Proposed Toxics Regulations in California Could Confront Manufacturers with New Testing Requirements.” *Industry Week*, December 8, 2011.
- “Regulating the Global Supply Chain: California’s OEHHA Proposes New Playground for Plaintiffs’ Attorneys,” *Environmental Leader*, November 1, 2011.
- “Viewpoint: Blakeslee Protecting Your Health with Bill,” *San Luis Obispo Tribune*, July 8, 2011.
- “From the Experts: It’s Not Easy Being Green,” *Corporate Counsel*, June 10, 2011.
- “Mad Scientists in the ‘Laboratories of Democracy,’” *Law360*, June 9, 2011.
- “Viewpoint: Yes on Prop 26—Supermajority Isn’t an Obstacle to Protecting State Environment,” *Sacramento Bee*, October 5, 2010.
- “Setting the Table to Settle the GHG Debate,” *Law360*, June 3, 2010.
- “Calif.’s Low Carbon Plan of Attack on Global Warming,” *Law360*, May 7, 2010.
- “EPA’s Decision in *American Electric Power Service* Sets the Stage for Requiring Reduced Greenhouse Gas Emissions,” *Bloomberg Law Reports - Sustainable Energy*, Vol. 3, No. 2, February 2010.
- “Creating Incentives to Develop Green Chemistry,” *The National Law Journal*, October 12, 2009.
- “Toy Safety Update: Two New Regulatory Playing Fields, New Sets of Rules, and New Umpires,” *The Toy Book*, September/October 2009.
- California School Facilities Planning: A Guide to Laws and Procedures for Funding, Siting, Design, and Construction, Solano Press, 2006.

## **Memberships**

- Bren School of Environmental Science & Management at the University of California Santa Barbara, advisory board and adjunct professor of administrative law.
  - [www.bren.ucsb.edu/partnerships/advisory\\_board.htm](http://www.bren.ucsb.edu/partnerships/advisory_board.htm)
- [California Manufacturers and Technology Association](#)
- [Interstate Chemicals Clearinghouse](#)
- [International Consumer Product Health and Safety Organization](#)
- [TechAmerica](#)
- ABA Section of Administrative Law and Regulatory Practice, Consumer Specialty Products Member
- [Consumer Specialty Products Association](#)
- [ABA Administrative Law Committee](#)
- [ABA Section of Environment, Energy, and Resources; Pesticides, Chemical Regulation, and Right-to-Know Committee](#)
- National Brownfield Association, Advocacy Committee

- California Brownfields Revitalization Advisory Group (BRAG), founder

### ***Education***

- Georgetown University (J.D., 1993)
- Johns Hopkins University (M.A., 1992)
- University of Pennsylvania (B.A., 1986)

### ***Admitted to Practice***

- California
- Virginia

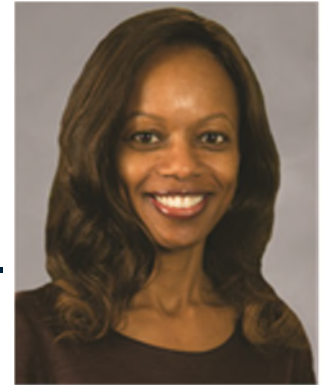
## Dominique R. Shelton

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Privacy & Data Security | Technology & Privacy | Transactions | Litigation |  
Privacy & Cybersecurity Litigation | Intellectual Property | Cybersecurity  
Preparedness & Response | Fintech

Dominique Shelton is a partner on Alston & Bird's Technology & Privacy Team. She is located in the Los Angeles office. She focuses her practice on privacy, data security and unfair competition. Dominique provides strategic privacy and cyber preparedness compliance counseling on cutting-edge issues such as security, mobile apps, Internet of Things, the Video Privacy Protection Act, Big Data, digital marketing and the cloud. She also leads data breach investigations, defends regulatory actions and provides subject-matter leadership in privacy consumer as well as business to business class action litigation. In 2012, she was named Intellectual Property Lawyer of the Year by the Century City Bar Association. In 2014, she was named one of the Most Influential Lawyers: Digital Media and E-Commerce Law by the *Los Angeles Business Journal*. In 2014, *The Recorder* named her as a Leader in Technology Law. In 2015, the *Los Angeles Business Journal* named her one of the Most Influential Lawyers in White Collar & Cyber Crimes Law. She has also been listed in the 2016 and 2017 editions of *The Best Lawyers in America*<sup>®</sup> in the area of Privacy and Data Security Law.

She has litigated privacy and data security matters and has negotiated with regulators such as the California AG and FTC.

Dominique represents Fortune 500 companies, startups and privately held companies across a broad spectrum of industries, including entertainment, health care, finance, digital advertising, retail and telecommunications.

### ***Representative Experience***

#### Privacy Counseling

- Preparing a comprehensive review of more than 100 FTC enforcement actions in the areas of privacy and cybersecurity to form the basis of legal assessments of company best practices in the areas of cybersecurity, cloud storage, Big Data, mobile and privacy.
- Preparing board reports for a publicly traded company concerning legal compliance with privacy and cybersecurity best practices.
- Conducting employee, HR and IT interviews as part of a comprehensive legal assessment of adequacy of privacy and cybersecurity policies.
- Advising a major medical device company on mobile medical application, Big Data, compliance with HIPAA privacy and security rules, the California Confidentiality of Medical Information Act (CMIA), cloud storage and privacy notices, policies and other privacy disclosures for its website for patient social networking and communication with health care advisors.
- Advising the largest online auction website on compliance with HIPAA and the CMIA and preparing valid authorization for online sales of prescription eyeglasses by an online retailer.
- Advising a health tech company regarding its online portal for diagnosis of ADHD, concerning compliance with HIPAA and the CMIA, and preparing privacy policies and CMIA disclosures.
- Advising a health tech social networking and review site on Big Data and website privacy disclosures.
- Advising a health care insurance plan on Health 2.0, privacy policies and doctor blogging.

- Advising an online medical billing company on compliance with the CMIA and consumer privacy disclosures, and preparing its website privacy notice, terms of use and CMIA authorization.
- Assisting a medical billing company with compliance with an FTC enforcement order and creating an updated website privacy policy, terms of use and website disclosures.
- Conducting privacy due diligence in connection with a Fortune 100 consulting company's acquisition of two medical billing companies.
- Assisting large restaurant chains on privacy and cybersecurity compliance in the areas of cloud, Big Data and mobile.
- Assisting a sports club in the NBA on cloud security issues.
- Advising a publicly traded media company on cloud and vendor management cybersecurity best practices.
- Advising companies on "Do Not Track" and behavioral advertising and industry best practices as articulated by the FTC, CA AG and self-regulatory groups DAA, IAB, NAI, TRUSTe and Better Business Bureau.
- Advising significant financial entities, e-commerce sites and media and entertainment companies on best practices for mobile privacy compliance.
- Counseling companies on best practices for collection of data through digital advertising promotions, contests and sweepstakes.
- Counseling clients regarding best practices for use of data in data management platforms (DMP) and other Big Data database platforms.
- Advising clients on best practices for sharing data with affiliates, cobranded marketing teams and third parties.
- Advising clients on compliance with the Children's Online Privacy Protection Act (COPPA).
- Counseling clients on developments with litigation involving the Video Privacy Protection Act (VPPA) and how to achieve compliance with amendments.
- Conducting data security audits and assisting with cybersecurity programs to implement data governance standards and best practices for data security.

#### Data Breach Investigations

- Project lead for a breach investigation for a global retail brand.
- Participating in a breach investigation for a national retailer.
- Leading a forensic breach investigation for a financial institution.
- Leading a breach investigation for a global e-commerce website.
- Leading a forensic breach investigation for an online service for a health and wellness mobile app.
- Leading a forensic breach investigation and consumer notification for a global media company.
- Leading a forensic breach investigation for a national consumer product retailer.

#### Cyber Preparedness Counseling

- Leading a comprehensive data security legal assessment.
- Leading a cybersecurity preparedness program for a financial institution and serving as outside counsel member of its Cybersecurity Incident Response Team.
- Leading a privacy and data security legal assessment compliant with the NIST Cybersecurity Framework (Feb. 2014) ID.GV-3.
- Leading a review of data security and IT policies for a cloud service provider for compliance with the NIST Cybersecurity Framework.
- Leading a privacy and data security legal assessment for a media company.

## Litigation

- Obtained denial of class certification in privacy class action litigation in which statutory damages were up to \$29 billion.
- Defending a national retailer in a data breach consumer class action.
- Defended a technology company and obtained denial of a temporary restraining order and permanent injunction.
- Representing a technology company in a \$40 million copyright litigation against a government contractor and obtained denial of summary judgment where the court rejected the defendants' government contractor defense. Obtained a second denial of summary judgment on copyright claims.
- Representing a technology company in multimillion-dollar copyright and trademark litigation.
- Representing a media agency in intellectual property litigation related to maladvertisement under the Copyright Act, Lanham Act and Anticybersquatting Consumer Protection Act.
- Representing a bankruptcy trustee in significant litigation concerning ownership of a digital music catalogue.
- Representing a financial institution in enforcement actions pertaining to its online intellectual property protection, including trademark infringement.
- Representing large companies in class action litigation in state and federal courts, including class action litigation pertaining to the Fair and Accurate Credit Card Transactions Act (FACTA).
- Represented a national automobile company regarding an online copyright and trademark enforcement program, which settled favorably for the client.
- Defended a manufacturer of inkjet refill kits against a competitor's claims for recovery based on theories of trademark infringement, trade dress and dilution.
- Defended a medical device manufacturer in a patent revocation lawsuit, quickly preventing revocation of the patent that was at the core of the client's business.
- Defended a major Los Angeles-based art museum in a trademark infringement and unfair competition case relating to claims under the Lanham Act, California state trademark law and California's Unfair Business Practices Act, resulting in no out-of-pocket payments by the client.
- Represented the fourth-largest distributor of electronic components in a trademark infringement lawsuit against a competitor that was using the client's mark in print and online. Obtained a final injunction order in the Central District of California preventing the use of the mark and revoking the web domain name under the Uniform Domain Name Dispute Resolution Policy administrative procedures.
- Represented a private venture capital fund in recovering damages from radio station owners in Dayton, Ohio, for breach of promissory notes, guarantees and security instruments. Obtained summary judgment and ruling for receiver after the defendant filed for bankruptcy.
- Advising advertisers, product manufacturers, smart phone application developers, major entertainment associations, production companies, media and event companies and cable studios regarding intellectual property, privacy and regulatory issues arising from Web 2.0, social networking websites, user-generated content, mobile content and digital advertising.
- Represented a web-to-online video-on-demand channel in intellectual property licensing litigation in California and Massachusetts.

## **Publications**

- *Privacy & Data Security Advisory: It's Not Just Europe: Why 2016 Cloud Vendor Management Programs Should Address Evolving Global Privacy and Cybersecurity Risks*, December 8, 2015.
- *Class Action Advisory: Retail Advertising: Consumer Class Actions Gaining Traction*, July 6, 2015.
- *Privacy & Security Advisory: District Court Rules a Unique Device Identifier Is Personally Identifiable Information for Purposes of the Video Privacy Protection Act*, June 17, 2015.



- *Privacy & Security Advisory: Russia's Tougher Rules on Data Collection Effective in September: U.S. Companies with Websites or Mobile Apps Targeted to Russia Beware*, June 2, 2014.
- "Court Finds Hulu Did Not 'Knowingly' Disclose PII in Violation of VPPA, Grants Summary Judgment," *Alston & Bird Privacy & Data Security Blog*, April 3, 2015.
- "Court Sides with Hulu in VPPA Case, Grants Summary Judgment with Prejudice," *Privacy Tracker*, IAPP.com, April 3, 2015.
- "What Is Reasonable Security? Steps Companies Can Take Now to Avoid Enforcement Actions," A&B *TRENDS in Litigation*, Winter 2014.
- Dominique Shelton: A Passion for Helping Clients Navigate Mobile Privacy and Security Risks, A&B Spotlight, October 2014.
- *Privacy & Security Advisory: Is Your Organization in Compliance with State Mini-TCPA Laws?* October 7, 2014.
- *Privacy & Security Advisory: European Data Protection Authorities to Ramp up Enforcement of Cookie Rules*, October 2, 2014.
- *Privacy & Security Advisory: California Governor Signs New Data Breach Law*, September 30, 2014.
- "A View from the Cloud: Protecting Privacy and Innovation," *Daily Journal*, September 22, 2014.
- "Retail Outlets: A Steal or Not for Real?," *Daily Journal*, September 8, 2014.
- *Class Action Advisory: Retail Outlets: A Steal or Not for Real?* August 21, 2014.
- "California AG Kamala Harris Issues Privacy Policy Guidance; Contains Draft Tips for Website and Online Service Privacy Policies," *Cyberspace Lawyer*, June 2014.
- *Cyber Alert: Cyber Risk Legal Package Update*, June 26, 2014.
- "Court Denies Class-Action in *Hulu* Case, But There's More You Need to Know," *Privacy Advisor*, June 19, 2014.
- *Privacy & Security/Class Action Advisory: Hulu: The Northern District of California Denies Class Certification without Prejudice on Grounds Class Not Ascertainable*, June 19, 2014.
- *Privacy & Security Advisory: California Attorney General Kamala Harris Releases Long-Anticipated Guidance Regarding Privacy Policy Notices*, May 27, 2014.
- *Privacy & Security Advisory: Special Assistant Attorney General Speaks on Privacy Issues at Alston & Bird's Los Angeles Office*, May 14, 2014.
- "Takeaways from the Hulu Privacy Case," *Law360*, April 30, 2014.
- *Privacy & Security Advisory: Northern District Court Grants Summary Judgment in Favor of Hulu as to the comScore Claims but Denies Summary Judgment as to the Facebook Claims*, April 29, 2014.
- "Calif. Data Breach Bill Lands in Big Retailers' Crosshairs," *Law360*, April 14, 2014.
- *Privacy & Security Advisory: Northern District of California to Decide in the In re Hulu Privacy Litigation Whether Disclosing Anonymized Data to a Web Analytics Company and Use of the Facebook "Like" Button Violate the Video Privacy Protection Act*, February 27, 2014.
- "What's Past Is Prologue: Snowden Leaks, New Domains, Global Jockeying for Internet Governance Role Still Dominate Cyberlaw Hot Topics in 2014," *Electronic Commerce & Law Report*, February 2, 2014.
- *Privacy & Security Advisory: 2013 Ends with a Bang—Northern District of California Denies Hulu's Motion for Summary Judgment in Video Tracking Case*, January 7, 2014.
- "Is Your Organization in Compliance with State Mini-TCPA Laws?," *Consumer Finance Law Quarterly Report*, Vol. 68, Nos. 2 & 3, 2014.
- "Inside Calif.'s Proposed Guidance for Do-Not-Track Law," *Law360*, December 20, 2013.

- *Privacy & Security/Legislative & Public Policy Advisory: On Eve of New Law Taking Effect, California Attorney General Announces Upcoming Best Practices Guidelines for Do-Not-Track Disclosures, December 13, 2013.*
- "How Calif.'s New Data Breach Law Will Impact Cos," *Law360*, October 17, 2013.
- *Privacy & Security Advisory: Prior Express Written Consent Now Required for Sending Marketing Messages via Robocall or Text Message; Questions Remain Regarding Pre-Existing Databases and Purely Informational Messages, October 16, 2013.*
- *Privacy & Security/Legislative & Public Policy Advisory: California Expands Data Breach Notification Law to Include Breaches of User Names and Email Addresses for Online Accounts, September 19, 2013.*
- *Privacy & Security/Legislative & Public Policy Advisory: California Adopts Do-Not-Track Disclosure Law, Reflecting a Significant New Development in a National Trend to Improve the Transparency of Online and Mobile Privacy Practices, September 19, 2013.*
- "No Cookie For You: How COPPA Will Affect Your Company," *Law360*, August 5, 2013.
- "Mobile Apps Great Marketing Tool or Litigation Trap for the Unwary?," *The SciTech Lawyer*, Vol. 9, Summer 2013.
- "Litigation Risk for Website and Mobile Apps Marketing," *Today's General Counsel*, March 2013.
- "The Benefits and Risks of Privacy in Today's Digital Marketing Age," *Corporate Compliance Insights*, January 10, 2013.
- "Online Behavioral Advertising Tracking Users: Gold Mine or Land Mine?," *Landslide*, Vol. 5, No. 1, September/October 2012 (published by the American Bar Association).
- "Big Brother Is Online and a Rising Risk for Insurers," *Law360*, March 29, 2012.
- "Takeaways from Obama's New Consumer Privacy Framework," *Daily Journal*, March 2, 2012.
- "Online Behavioral Advertising/Tracking Litigation: A Rising Risk Facing Insurers and Insureds," *Edwards Wildman Insurance and Reinsurance Review*, March 2012.
- "Montz—Breaking New Ground for Idea Submission Law After the U.S. Supreme Court Denies Cert," *Entertainment & Intellectual Property Law Journal*, Vol. 2, No. 1, February 2012.
- "The Right to Track," *The Recorder*, January 9, 2012.
- "Online Behavioural Advertising: The Gathering US and European Union Storm," *International Institute of Communications InterMedia Magazine*, Vol. 39, No. 5, December 2011.
- "Defending Behavioral Ad Class Actions," *Law 360*, October 20, 2011.
- "Do Not Track Me," *Corporate Counsel*, May 18, 2011.
- "Online Behavioral Advertising," *e-Commerce Law & Strategy*, May 2011.
- "The Descent of Behavioral Advertising Class Actions," *The Daily Journal*, March 2, 2011.
- "A Game Changer," *Los Angeles Daily Journal*, November 5, 2008.
- "EU, US Grapple with Online Counterfeit Goods," *Law 360*, October 1, 2008.
- "Will Congress Squelch Behavioral Advertising?," *E-Commerce Times*, August 27, 2008.
- "Online Behavioral Advertising—Key to Internet Monetization or Privacy Probes?," *Privacy & Information Law Report*, July/August 2008.

### **Professional & Community Engagement**

- The National Black Lawyers
- International Association of Privacy Professionals and Certified Information Privacy Professional (CIPP/US)
- Federal Bar Association of Los Angeles, board of directors

- Magistrate Judge Merit Selection Panel for the U.S. District Court for the Central District of California (December 2011–present)
- Los Angeles County Bar Association, Entertainment & Intellectual Property Law Section (ELIPS), chair (2011–2012)
- Ninth Circuit Judicial Conference, lawyer representative
- Big Brothers Big Sisters of Greater Los Angeles, board (2007–2010)
- Women Lawyers Association of Los Angeles (WLALA), president (2005–2006), life member
- National Bar Association (NBA), life member
- Black Women Lawyers Association of Los Angeles (BWL), life member
- Langston Bar Association, life member
- California Women Lawyers Association, board (2004–2006)

### **Events**

- “Coming to a ‘\_\_\_\_\_’ Near You; Streaming, Video, Smartphone, or Theatre? How Global Interests and Technologies Have Revitalized Local Motion Picture Exhibition and Distribution,” LACBA, May 9, 2017.
- International Association of Privacy Professionals (IAPP) Global Privacy Summit 2017, April 19-20, 2017.
- “Breach Notification and Federalism: Does it Work?” American Bar Association (ABA) Breach Notification Teleconference Panel, February 27, 2017.
- “Privacy & Cybersecurity in M&A Transactions” IAPP KnowledgeNet, February 27, 2017.
- “Emerging Threats and Developing Remedies: Smart Devices and Connected Data Sources,” ACI’s 21st Advanced Global Legal and Compliance Forum on Cyber Security and Data Privacy & Protection, January 30-31, 2017.
- “Cybersecurity,” Orange County Bar Association’s MCLE Last Dash Seminar, January 14, 2017.
- “Top Issues in Privacy and Cybersecurity,” SmartFlow EDA/CAD Anti-Piracy Summit, November 2, 2016.
- “The New Hollywood, The Place Where Technology & Entertainment Converge,” 36th Annual Black Entertainment and Sports Lawyers Association (BESLA) Conference, October 19-23, 2016.
- “Top Risks That Every In-House Lawyer Should Plan For,” Alston & Bird Privacy & Cybersecurity CLE, October 13, 2016.
- California Association of Realtors® Fall Business Meetings, September 30, 2016.
- “Accumulating User Behavior Data - What ARE the Risks?,” 2016 PLUS Cyber Symposium, September 27, 2016.
- “Privacy Litigation: Defining Privacy Harm,” IAPP: Privacy. Security. Risk. 2016, September 14-16, 2016.
- “Does your PbD framework incorporate the latest regulations and best practices?” IAPP Web Conference, August 12, 2016.
- “Is Your Firm’s Security Strategy Effective?” The Knowledge Group, July 20, 2016
- “FinTech - Joint Panel Debate,” ACC Israel 2016, June 22, 2016
- “Privacy & Data Security - Top 3 Things Every Company and Practitioner Should Know,” seminar, June 21, 2016
- “411: Top Legal Cyber preparedness and Privacy Compliance Tips for California Lawyers in 2016,” 2016 California Association of Black Lawyers Conference, April 29, 2016
- “Top Privacy and Cyber Security Issues for 2016 – What Every REALTOR Needs to know to Protect Their Customers and Brand,” REALTOR Risk Management and Consumer Protection Forum, April 29, 2016
- “The Asia Data Shake-Up: What U.S. Privacy Professionals Need to Know About Asia’s Data Laws,” Alston & Bird Privacy Program, April 13, 2016

- “Privacy Litigation: Defining Privacy Harm,” IAPP Privacy Bar Section Forum 2016, April 7, 2016
- “Keynote Panel: Data Breach Outlook: Tracking the Next, Seemingly Inevitable Attack,” Fraud & Breach Prevention Summit: San Francisco, March 22, 2016
- “Thinking Outside the Cookie Jar: Opportunities and Risks of Mobile Tracking,” IAPP Privacy. Security. Risk. 2015, September 30, 2015
- “Ethical Issues Facing Lawyers in the Entertainment Industry,” Langston Bar Association, August 13, 2015
- “Data breach/Cyber Attack? Stay Calm and Call a Lawyer,” National Bar Association 2015 Corporate Leadership Forum, July 18, 2015
- “Privacy, Security and Data Breach Issues Relevant to M&A – Why Every Company Should Think Through Privacy & Data Security Issues in a Deal,” ACC Israel, June 16, 2015
- “The Emerging Law on Corporate Cyber Liability: Privacy, Data Breaches & System Failures—Oh My!,” Georgetown’s 2015 Cybersecurity Law Institute, May 20-21, 2015
- “Breach Investigations: How to Work Effectively with Your Board, Legal Counsel, Law Enforcement and the Government,” **iSMG’s Fraud Summit, May 19, 2015**
- **“Thinking Outside The Cookie Jar,”** Alston & Bird Privacy Program, April 29, 2015
- 2015 Annual CLE Seminar for Alumni and Clients, Alston & Bird Program, March 19, 2015
- “EU Data Protection Law: Today and Tomorrow,” Alston & Bird program, February 4, 2015.
- “Old Bias Learning New Tricks in New Media: An IP and Privacy Overview,” State Bar of California, January 15, 2015
- “At the Intersection of Privacy and Business,” Alston & Bird program, November 20, 2014.
- “Big Data & Wrongful Collection,” Cyber Risk & Privacy Liability Forum, October 9, 2014.
- “What the Tech Savvy In-House Counsel Needs to Know About – Updating Privacy Policies; Social Media Policies; Updating Cloud Computing,” Corporate Counsel Women of Color Tenth Annual Career Strategies Conference, October 8, 2014.
- “The Threat To Omnichannel Innovation: How Comfortable Is Your Customer Now?,” Shop.org Summit 2014, October 2, 2014.
- “From Continent to Continent: Hot Topics in Privacy, Learn How to Keep Your Company From Being on the Front Lines,” Lex Mundi 2014 Intellectual Property Practice Group Global Meeting, September 26, 2014.
- “Navigating Legal Issues of Healthcare in the Cloud,” American Bar Association, July 29, 2014.
- “Is Diversity Still Important in 2014?,” Alston & Bird diversity program, June 19, 2014.
- “Hot Topics in Privacy, Class actions and IP: Things Every Lawyer Needs to Know about Risks, Compliance and Best Practices in This Age of Big Data, Big Lawsuits and Big Risk,” Alston & Bird program, July 16, 2014.
- “Privacy Briefing from the California Attorney General’s Office,” Alston & Bird, May 13, 2014.
- “Online Advertising Done Right,” CARU West Coast Conference 2014: Marketing to Children in a Digital Landscape, May 7, 2014.
- “Take a Lead: Get Out in Front of the Top Privacy Issues Impacting Your Business Operations,” American Corporate Counsel Association, San Francisco, CA, April 16, 2014.
- “Electronic Communications Privacy Act Reform,” The Stanford Technology Law Review 2014 Symposium: Privacy Challenges in the Internet Age, Philadelphia, PA, April 11, 2014.
- “Emerging Issues in Healthcare IP: Medical & Mobile Tech Explored,” The Knowledge Group Webcast, February 28, 2014.

- Beverly Hills Bar Association Program “Online Advertising—Nuts & Bolts and Latest Developments,” Beverly Hills, CA, January 29, 2014.
- Elimination of Bias in Intellectual Property, LAIPLA, Los Angeles, CA, January 14, 2014.
- “Putting it Together: Running Programs on Social Media, Mobile and Apps,” PLI’s Tracking and Targeting Customers and Prospects Online, on Mobile Devices, and in Social Media 2013, San Francisco, CA, November 12, 2013.
- Women and Wealth: Integrating Professional Growth and Personal Goals, Women Lawyers Association of Los Angeles, Los Angeles, CA, October 29, 2013.
- “Business Opportunities and Obstacles on the eMerging Screens,” Black Filmmakers Foundation Summit, Santa Barbara, CA, October 18, 2013.
- “Once More Unto the Breach: Navigating Data, Privacy and E-Commerce Issues from Across the Atlantic,” Alston & Bird OLSWANG program, Menlo Park, CA, October 16, 2013.
- “The Data Analytics and Aggregators,” HB Litigation Conference Net Diligence Cyber Risk and Privacy Liability Form, Marina del Rey, CA, October 9–11, 2013.
- “Privacy and Mobile Apps—How to Avoid a Lawsuit,” IAPP Privacy Academy, Seattle, WA, October 2, 2013.
- IAPP Webinar “Practical Steps for Achieving Privacy Compliance on Mobile Platforms,” September 26, 2013.
- “Mobile BYOD, Security and Mobile Apps: Privacy Hot Topics for Q3-Q4 2013,” CISO Executive Network Roundtable Series, Menlo Park, CA, September 11, 2013.
- “Fandango & NBC Universal Children’s Online Protection Act (COPPA) & Media” MCLE, August 29, 2013.
- “Your Secret’s Safe with Me: Protecting Proprietary Information in the Digital Age,” National Bar Association 88<sup>th</sup> Annual Convention, July 29, 2013.
- “Security Incidents: Fundamentals and Best Practices,” CISO Executive Network Roundtable Series, June 16, 2013.
- “Minimizing the ‘Creep Factor’: Establishing Parameters for Behavioral Advertising and Geo Locating in Order to Enhance the Consumer Experience While Minimizing Privacy Concerns,” ACI Summit on Advertising Privacy Compliance: Mobile Apps, Smart Phones & the World Wide Web, June 4–5, 2013.
- “Leaning Into Leadership,” Georgetown University Law Center Women’s Forum Breakfast, May 29, 2013.
- “Update on Social Media and Mobile Computing,” IAPP Knowledge Net, Los Angeles, CA, April 2, 2013.
- “New FTC Mobile Privacy Guidelines” Law Seminars International, March 28, 2013, (Telebriefing).
- Stanford Law School’s E-Commerce Best Practices Conference, June 18, 2012.
- “Litigation Considerations,” IAPP Practical Privacy Series: Data Breach, June 6, 2012.
- “The Current Online Behavioral Advertising Landscape,” PLI’s Privacy and Data Security Law Institute, May 21-22, 2012.
- “Protecting Privacy and IP in Social Media,” Black Women Lawyers Association of Greater Chicago’s 2012 National Summit, Chicago, April 13, 2012.
- “Putting it Together: Running Programs on Social Media, Mobile, and Apps,” PLI’s Tracking and Targeting Customers and Prospects Online, on Mobile Devices, and in Social Media 2012 Conference, San Francisco, November 13, 2012.
- “Behavioral Advertising and Other Privacy Issues in Social Media: The Benefits and Risks of Targeted Ads,” PLI’s Technology and Entertainment Convergence 2012: Hot Business and Legal Issues in “Technotainment,” September 7, 2012 (New York, NY); September 19, 2012 (San Francisco, CA).

- Media Concentration in a Global Digital Universe: The Changing Role of Hollywood and the Entertainment Industry, University of Tennessee College of Law Entertainment Law Conference titled “Metamorphosis How Technology is Reshaping Entertainment,” March 31, 2012.
- “Cloud Computing: Healthcare IT Models,” ABA Section of Science & Technology Law’s Think Outside the Box Lunch, Chicago, March 2, 2012.
- “Social Media’s Evolving Legal and Ethical Considerations: Can We All Be Friends?” National Bar Association Commercial Law Section’s 25th Annual Corporate Counsel Conference, February 24, 2012.
- “Bonjour! Bonjour! The Internet World Tour!” The Copyright Society of the USA 2012 Mid-Winter Meeting, Los Angeles, CA February 4, 2012.
- “Claims and Defenses on the Merits: Defendant’s Perspective,” PLI’s Privacy and Behavioral Advertising Class Action Suits: What Every Litigator and In-House Lawyer Needs to Know Seminar, Palo Alto, California, January 24, 2012.
- “Data Privacy Class Actions: Key Strategic Considerations for Businesses,” Law Seminars International TeleBriefing, December 2, 2011.
- “Protect Your Privacy in the Information Age,” KUCI Radio, November 7, 2011.
- “Online Privacy: An Oxymoron? The Risks of Online Behavioral Advertising,” Professional Liability and Underwriter Society (PLUS) 2011 Conference themed Your Global Neighborhood, November 3, 2011.
- “New Rules for a Changing Landscape: The Evolving Practice of Entertainment and Media Law,” Black Entertainment and Sports Lawyers Association Annual Conference, October 28, 2011.
- “Hot Topics in Entertainment Litigation for the In-House Attorney and the Talent, Studio, Network or Label Litigator,” Black Entertainment and Sports Lawyers Association Annual Conference, October 27, 2011.
- “The Perils of Social Media Under the Laws of the United States and Canada,” American Bar Association (ABA) Annual Meeting, August 4, 2011.
- “We Know Where You’ve Been: Emerging Rules in Online Behavioral Advertising,” Twelfth Annual Privacy and Data Security Law Institute, Chicago, July 19, 2011.
- “Behavioral Advertising: Legal Update,” Wildman Harrold, Chicago, January 12, 2011.
- “Entertainment Law Year in Review,” Beverly Hills Bar Association, January 2011.
- “Approaching Web and Mobile 3.0: The Practical Evolution of Digital Marketing,” Insights for In-House Counsel, Wildman Harrold, Chicago, March 5 and June 11, 2010; Silver Springs, MD, April 22, 2010.
- “Courts and Social Media,” 2010 Central District of California Judicial Conference, April 17, 2010.
- “Online, Social and Mobile Media: Navigating the Changes,” presented to Edelman PR April 27, 2010; and Mattel’s in-house counsel, March 30, 2010.
- “Copyright Wars,” MCCA CLE Expo, March 18, 2010.
- “Approaching Web and Mobile 3.0: The Practical Evolution of Digital Marketing,” Insights for In-House Counsel Conference, March 5, 2010
- “ABA Section of Antitrust Law Consumer Protection Update,” March 1, 2010.
- “Software in the Stratosphere: Practical Strategies for Copyright Enforcement in the Digital Age,” State Bar of California, 34th Annual Intellectual Property Institute: IP in Vogue, November 12, 2009.
- “Recent Developments: Assessing the Behavioral Advertising Landscape,” ABA Section of Antitrust Law—Privacy and Information Security, Consumer Protection, and Private Advertising Litigation Committees, October 7, 2009.
- “Brave New World: New IP Risks in Evolving Media,” MediaMorphosis2009, Beverly Hills, CA, February 3, 2009.

- “January 2009 Privacy Update,” ABA Section of Antitrust Law—The Privacy and Information Security, Corporate Counseling and Computer Industry & Internet Committees, January 13, 2009.
- Keynote Address, “Web 2.0-Evolving Legal Issues Raised by User-Generated Content, Social Networking and Digital Advertising,” 2008 Computer & Technology Law Institute, October 24, 2008.
- “Web 2.0 Social Networking, User-Generated Content and Digital Advertising: Evolving Legal Issues,” USC 50th Anniversary Institute on Entertainment Law and Business Your Television Is Ringing: Entertainment in a Digital World, October 18, 2008.
- “Digital CrossRoads in Entertainment,” Georgetown Entertainment Media Alliance, October 1, 2008.

### **News**

- Referenced, “Wendy’s Slams Magistrate’s OK of Data Breach Suit,” *Law360*, February 28, 2017.
- Quoted, “Lawyers Ready to Pounce if Companies Forgot IoT Privacy,” *Bloomberg BNA*, February 17, 2017.
- Referenced, “Wendy’s Should Face Data Breach Suit, Magistrate Says,” *Law360*, February 13, 2017.
- Quoted, “How to Help Insureds Manage Customer Privacy Risk,” *Insurance Journal*, October 24, 2016.
- Quoted, “Firms Should Look Closely At Data Practices, New Your Conference Panelists Say,” *Insurance Journal*, September 28, 2016.
- Referenced, “Wendy’s Seeks To Exit Data Breach Aftermath Suit,” *Law360*, August 23, 2016.
- Referenced, “Wendy’s Says Data Breach Suit Still Lacks Standing,” *Law360*, August 22, 2016.
- Referenced, “Wendy’s Beats Data Breach Class Action for Now,” *Law360*, July 15, 2016.
- Quoted, “Why the Spokeo Ruling Maybe Isn’t What You Thought,” *The Privacy Advisor*, May 17, 2016.
- Referenced, “Wendy’s Seeks Dismissal of Proposed Data Theft Class Action,” *Law360*, April 5, 2016.
- Quoted, “The Morning Risk Report: Europe Standardizes Cyber Rules,” Wall Street Journal Blog, December 10, 2015.
- Quoted, “The Morning Risk Report: Safe Harbor End Imperils Israeli Data Access,” Wall Street Journal Blog, November 9, 2015.
- Quoted, “Companies Can Take Proactive Steps To Limit Liability Exposure for Data Breaches,” *Bloomberg BNA*, May 29, 2015.
- Quoted, “What the Hulu decision means for online streaming companies,” *Law360*, April 28, 2015.
- Quoted, “Hulu’s Win Won’t Halt Video Privacy Class Actions,” *Law360*, April 1, 2015.
- Quoted, “Google Ruling Won’t End Video Privacy Class Actions” *Law360*, January 23, 2014.
- Quoted, “Winning 2nd Term, Calif. AG To Lead Privacy, Environment,” *Law360*, November 5, 2014.
- Awarded, Leader in Technology Law, *The Recorder*, August 2014.
- Ranked, Most Influential Lawyers: Digital Media and E-Commerce, *Los Angeles Business Journal*, July 2014.
- Quoted, “Calif. AG’s Online Privacy Guidelines to Shape U.S. Standard,” *Law360*, May 30, 2014.
- Quoted, “Hulu Ruling Offers Privacy Plaintiffs New Route To Victory,” *Law360*, May 1, 2014.
- Quoted, “Hulu Can’t Shake Video Privacy Class Action,” *The Recorder and Litigation Daily*, April 29, 2014.
- Quoted, “LinkedIn Ruling Boosts Prospects For Data Breach Plaintiffs,” *Law360*, April 15, 2014.
- Quoted, “Landmark FTC Win Fuels Uncertainty for Data Breach Targets,” *Law360*, April 9, 2014.
- Quoted, “Hot Topics in 2014,” *Bloomberg BNA*, February 3, 2014.
- Quoted, “In re: Hulu Privacy Litigation,” *Law360*, January 3, 2014.
- Quoted, “Privacy Cases to Watch in 2014,” *Law360*, January 1, 2014.

- Quoted, "Courting Trouble?" *Los Angeles Business Journal*, December 17, 2013.
- Quoted, "Privacy Law Watch," *BNA Bloomberg*, October 9, 2013.
- Quoted, "Digital Ads and 'Native Marketing,'" *Daily Journal*, October 2, 2013.
- Quoted, "Children's Online Privacy Protection Act Rule," *Law360*, August 19, 2013.
- Quoted, *Daily Journal*, July 23, 2013.
- Quoted, "Web Firm Settles Claims Over 'Surreptitious' Internet Tracking," *Reuters Westlaw Journal Computer & Internet*, December 21, 2012.
- Quoted, "FTC Settlement Gives Facebook Leverage Over Competitors," *The Washington Post*, January 30, 2012.
- Quoted, "Fans' Ideas at Risk," *LA Daily Journal*, December 20, 2011.
- Quoted, "Dance Reality Show IP Case Settles," *LA Daily Journal*, November 11, 2011.
- Quoted, "'Ghost Hunters' Case Could Limit the Way Projects are Presented to Nets, Studios," *Variety*, November 8, 2011.
- Quoted, "Supreme Court Deals Setback to Hollywood, Won't Hear Key 'Ghost Hunters' Case," *The Hollywood Reporter*, November 7, 2011.

***Education***

- Georgetown University (J.D., 1991)
- Brown University (B.A., 1988)

***Admitted to Practice***

- California

***Languages***

- French



## Kathleen A. Hill

### Planning Director

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#### Land Use

Kathleen Hill is a planning director who works closely with attorneys and clients on a range of land use planning, building permits, wireless telecommunication facilities, California Environmental Quality Act (CEQA) compliance and related entitlement matters.

Kathleen has more than 25 years of experience in planning, real estate development and project management. She previously worked as a site development manager in the wireless telecommunications industry, where she acquired real estate suitable for the development of antenna facilities, prepared and processed entitlement applications and negotiated approvals with public agencies throughout Southern California. Her public sector land use experience includes working as an associate planner for the cities of Riverside and Perris. Kathleen has also worked as a planning consultant on residential and commercial projects, tentative maps, zoning code amendments, specific plans and the City of Indio General Plan Update.

#### ***Representative Experience***

- Represented a developer in securing a commercial corner conditional use permit for the construction and development of a 45,000 square foot commercial building in West Los Angeles. Successfully negotiated with council district staff and the neighborhood council to obtain height and setback adjustments as well as deferral of street dedication and widening.
- Secured approval for a conditional use permit to expand a private elementary/middle school in Playa Vista, California. Obtained the support of the neighborhood council and city councilmember to add a 15,694 square foot building to the campus for an early childhood center and school gymnasium.
- Represented a developer in a joint public/private project to construct a 90-unit affordable and market rate housing complex and juvenile impact project facility on a portion of a high school in South Los Angeles. Secured approval for a conditional use permit, a variance to reduce parking and a height increase.
- Negotiated with Los Angeles County and the City of Santa Clarita to obtain water franchise agreements for a local water service provider.
- Advised and represented a retail center developer in establishing new parking rates for a public parking garage in the Hollywood, California, community redevelopment area.
- Represented a developer in obtaining approval for a general plan amendment, zone change and site plan for a 126,980 square foot mixed-use retail/commercial project in Hollywood, California.
- Prepared applications and secured approvals to extend the entitlement for over 50 wireless telecommunications facilities with expired permits in jurisdictions throughout California.
- Lobbied Los Angeles officials to revise building and safety interpretation of the Zoning Code related to the placement of telecommunications equipment inside existing buildings.

#### ***Memberships***

- City of Long Beach Pedestrian Safety Advisory Committee, representing District 5
- California Wireless Association Regulatory Committee

## *Education*

- University of Southern California (B.S., 1986)

## John R. Kabateck

### Senior Public Policy Consultant

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John Kabateck has nearly twenty-five years of leadership with strategic coalition development and implementation in California’s public policy and political arenas, with an emphasis on the full spectrum of business and employment issues. As a premier player in Sacramento and California public policy and advocacy, John helps clients to become more relevant, involved and impactful through strategic positioning and public affairs strategies.

John is the former California Executive Director of the National Federation of Independent Business, and the lead lobbyist on behalf of NFIB’s 22,000 California business members. John led the organization’s successful efforts to protect small businesses from higher taxes, including split roll/Prop 13 reform, frivolous “shakedown” lawsuits, and burdensome regulations, in the California Legislature, in the executive branch and at the ballot. Specifically, he worked to advance issues on health care, pensions, retirement, environmental and other issues, including a leading role in working with Senator President Pro-Tem Kevin De Leon to support and advance legislation to allow for employer-driven retirement contributions.

John was also the former Senior Legislative Director and Vice President of the California Restaurant Association, developing and implementing successful public affairs and advocacy efforts on labor, tax and employee benefits issues.

John previously served as Chief of Staff in the California State Assembly and as Director of Coalitions for Governor Pete Wilson’s successful re-election campaign and as Wilson’s Chief Deputy Appointments Secretary, where he was responsible for full-time and board/commission appointments spanning more than eight state agencies, including the Business, Transportation and Housing Agency and Trade and Commerce Agency. More recently, he was selected by Governor Schwarzenegger to serve as Director of External Affairs, to manage the Governor’s statewide offices and coalitions across business, local government and ethnic communities to achieve the Governor’s policy and legislative goals.

#### ***Representative Experience***

- Spearheaded a statewide effort to involve more than 300 grassroots voices – small businesses, working families, educators, local elected officials and others – to communicate with priority legislators about the adverse impact onerous energy regulation would have on their district and communities. Efforts involved planning and execution of multiple meetings, calls, emails and outreach from constituents, a statewide media fly-around and mobilizing numerous “voices” to testify in State Capitol. As a result, the Governor and State Senator authoring this legislation amended the bill to remove this onerous mandate.
- Led effort with California Restaurant Association to activate many of its 24,000 members at the statewide level and in target cities, including Los Angeles and Pasadena, to advocate for responsible minimum wage policy to help small businesses and employees. Efforts involved regular communication with membership about advocacy efforts, creation of coalition of leading business, taxpayer, education and other organizations, and regular involvement of stakeholders in city council chambers, local media activities and regular briefings. Results included modified minimum wage policy to incorporate small business-friendly provisions (phase-in, credits, etc.), as well as media visibility in media outlets to be sure small business story was shared on a regular basis.

- Advised and assisted a client with the development of a major rural Northern California waterway with early and focused outreach to constituents, including agriculture, small business, recreation enthusiasts, local elected officials, and local economic development and community organizations. Efforts include involvement of real “voices” in the media (op-eds, feature stories, etc.), local public scoping hearings and meetings, and assistance with coordinating presentations/endorsement opportunities for the client. Public awareness has increased, as have positive print stories and local communication about the project.
- Advised and supported media efforts on behalf of California philanthropist B. Wayne Hughes, Jr., to build media visibility and public awareness to expand the reach of veterans’ treatment courts to all California counties. Efforts included statewide media campaign, grassroots mobilization and State Capitol legislative strategy.
- Advised various California business trade organizations to expand their profile, positioning and impact in the State Capitol on issues affecting their members. Has resulted in increased public awareness and engagement with legislators, Governor’s administration and other California opinion leaders.

### ***Memberships***

- National Federation of Independent Business
- Sacramento Metropolitan Chamber of Commerce
- St. John’s Program for Real Change

### ***Education***

- University of Southern California (B.A., 1990)

## David R. Godofsky, F.S.A.

### Partner

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david.godofsky@alston.com

Washington, D.C. | The Atlantic Building | 950 F Street, NW | Washington, DC 20004



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Tax | Employee Benefits & Executive Compensation | ERISA Litigation | Insurance

David Godofsky a partner in the firm's Employee Benefits & Executive Compensation Group, which was named "Law Firm of the Year" by U.S. News – Best Lawyers® for ERISA Litigation in 2016 and Employee Benefits (ERISA) in 2015 and 2017. He has a multidisciplinary practice that is unique in the United States. His ability to integrate legal analysis with cost, funding, administration and benefit design considerations is informed by his education and years of experience as an actuary and consultant. David is a member of a team of litigators who have represented several major employers in cutting-edge class action litigation and other "bet the company" litigation matters. He has represented clients before the Supreme Courts of Florida and Illinois, as well as U.S. district courts and state trial courts around the country.

David is a Fellow of the Society of Actuaries, an Enrolled Actuary, a former director of the Conference of Consulting Actuaries, and former vice chairman of the Education & Examination Committee of the Society of Actuaries. He currently serves as Chairman of a committee of the Actuarial Standards Board, and on the program committee of the Enrolled Actuaries Meeting. In response to his comment letters, the U.S. Department of the Treasury corrected an error in pension funding regulations and changed the rules for determining whether cash balance plans satisfy the backloading requirements.

Before joining Alston & Bird, David spent 18 years designing, implementing and administering employee benefit plans, determining costs, and helping employers control costs and get the most for their employee benefits budgets. His clients seek his advice for practical, workable solutions to complex problems, and the ability to make highly technical concepts understandable to executives, employees, judges and arbitrators.

#### **Representative Experience**

- Represented one of the largest actuarial consulting firms in the U.S. in *Providence v. Buck Consultants*, in which the city contended that Buck committed actuarial malpractice in estimating the savings from its 2012 pension reforms. The U.S. district court granted our motion for summary judgment on all counts, which the city did not appeal.
- Represented the Retirement Plan for Chicago Transit Authority Employees in the Supreme Court of Illinois in *Mathews v. Retirement Plan for CTA Employees*, in which employees challenged the state constitutionality of the cost-saving modifications to the CTA's retiree medical benefits (one class of 7,000 plaintiffs was dismissed, and the litigation for the remaining plaintiffs was remanded to the lower courts).
- *Merial Limited v. Velcera, et al.*, Civil Action No. 3:12-cv-75, United States District Court for the Middle District of Georgia. Represented Merial Limited in successful motion for preliminary injunction to prevent defendants from selling a competing product that would infringe on the patent for Frontline Plus anti-flea and tick medicine for dogs and cats.
- Represented the governor of Florida and the State of Florida in *Scott et al., v. Williams et al.* in which plaintiffs claimed that Florida's new pension law for state and municipal employees violates the state constitution.
- Represented numerous companies in negotiations with the PBGC on a variety of issues, including 4062(e) liability.

- Drafted a comment letter on proposed Liquidity Shortfall funding regulations signed by the Chief Actuaries of Towers Watson, Aon Hewitt, Buck Consultants, Principal Financial Group, The Segal Company, Savitz and Turpin Consulting Group. In September of 2015 the Department of the Treasury issued the final regulation implementing the change to the proposed regulation that Mr. Godofsky requested.
- Represented several large public companies in benefits issues in numerous acquisitions and mergers of equals, and advised those companies on the integration of their benefits plans and executive compensation arrangements.
- Represented a major airline in a billion-dollar, class action involving pension calculations, which was settled for less than two percent of the amount claimed by the plaintiffs.
- Represented one of the largest public companies in the United States in negotiations with the PBGC over liability under Section 4062(e) of ERISA.
- Represented a major insurance company in litigation with another insurer regarding transfer of actuarial reserves, winning a complete victory in Federal District Court.
- Represented a publicly held media conglomerate in connection with a violation of the anti-discrimination rules under Section 401(a)(4) of the Internal Revenue Code, reducing the cost of correction by more than 98 percent.
- Drafted amendments to hundreds of non-qualified retirement plans, executive compensation arrangements and employment agreements to comply with Section 409A of the Internal Revenue Code.
- Represented a mining conglomerate in an arbitration regarding a transfer of pension assets, resulting in a transfer to our client of the entire amount in the controversy.
- Represented a major financial institution in a dispute with federal regulators over statistical evidence of employment discrimination, settling the case for less than one percent of the amount claimed by the government.
- Represented an actuary in an ethics investigation before the Actuarial Board for Counseling and Discipline, in which no disciplinary action was taken.
- Represented an actuarial firm in a malpractice suit that was settled for less than one percent of the amount claimed.
- Represented numerous public companies in VCP filings and other self-corrections for qualified plans.

## **Publications**

- "The Real Reasons You Should Use Roth 401(k) or a Roth IRA," *Bloomberg BNA*, May 5, 2017.
- "Illinois Supreme Court Affirms Constitutional Protection of Public Pensions," *Benefits Law Journal*, Vol. 28, No. 3, Autumn 2015.
- "Cash Balance Developments," *The Practical Lawyer*, October 2015.
- "*M&G Polymers v. Tackett*: New Standards for Vesting of Retiree Medical Benefits in Collective Bargaining Agreements," *ECFC Flex Reporter*, March 2015.
- "Florida Supreme Court Upholds Prospective Changes to State's Public Employees Retirement System," *Employee Benefit Plan Review*, May 2013.
- "401(k) Discrimination Testing and Peanut Butter and Jelly Sandwiches," *BNAs Pension & Benefits Reporter*, December 6, 2011.
- "Pay or Play? How Health Care Reform Changes the Game for Employers," *Benefits Compliance Advisory*, March 9, 2011.
- "Does it Make Economic Sense to Drop Health Coverage? The Answer May Surprise You," *The Self-Insurer*, March 2011.
- "Adventures in Backloading," *21 Benefits Law Journal* 41, Winter 2008.
- "Supreme Court Allows Individual Damages Claims for Breach of Fiduciary Duty," *Benefits & Compensation Law for Nonprofits*, Vol. 24, No. 3, March 2008.

- “Beyond Milton Friedman’s Imprimatur: Law and Logic Support Monetarist Rejection of Age Discrimination Challenge to Cash Balance Plans,” 19 *Benefits Law Journal* 97, Winter 2006.
- “Cash Balance Plans: Recent Events and Historical Perspective,” *Benefits and Compensation*, December 2006.
- “Seventh Circuit Rules that Cash Balance Plans Are Not Age Discriminatory; Second, Third, and Ninth Circuits Could Follow,” *Illinois State Bar Association’s Section on Employee Benefits Newsletter* Vol. 25, No. 1, at 9, September 2006.
- “Preretirement Mortality Discounts,” 17 *Benefits Law Journal* 112, Winter 2004.

### **Memberships**

- Society of Actuaries, Fellow, Education & Examination Committee (former vice chair) Internal Revenue Service, Enrolled Actuary
- Conference of Consulting Actuaries, Fellow, former director American Academy of Actuaries
- Enrolled Actuaries Meeting, Program Committee
- The Best Lawyers in America<sup>®</sup>, every year since 2013
- *Listed in Chambers USA: America’s Leading Lawyers for Business*

### **Education**

- University of Virginia (J.D., 1982)
- The College of Insurance (B.S., 1979)

### **Admitted to Practice**

- District of Columbia
- Tennessee
- Missouri

## Syed Fahad Saghir, A.S.A. Senior Associate

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Employee Benefits & Executive Compensation | Tax

Fahad Saghir is a senior associate in the firm's Employee Benefits & Executive Compensation Group whose practice is focused on a variety of employee benefits issues facing clients, including plan design, qualification, nondiscrimination, funding and benefit restriction rules under the Code and ERISA. Mr. Saghir also advises clients on correcting plan errors under the IRS Employee Plans Compliance Resolution System.

Mr. Saghir brings exceptional experience to his ERISA practice. He is an associate of the Society of Actuaries and, prior to joining Alston & Bird, spent five years working as an actuarial consultant, performing actuarial calculations for qualified retirement plans and advising clients on accounting expense, contribution requirements, costing for plan design changes and assisting clients in selecting employee benefit plans by balancing their human resource goals and budgetary considerations.

### ***Publications***

- "Chart - Comparison of Hours of Service for Purposes of Qualified Plans and Employer Shared Responsibility under PPACA," American Benefits Council, February 13, 2013.

### ***Memberships***

- Associate of Society of Actuaries
- Board Member, South Asian Bar Association of DC

### ***Education***

- Brigham Young University (J.D., 2006)
- Brigham Young University (B.S., 2003)

### ***Admitted to Practice***

- District of Columbia
- Illinois



## Meredith Gage

### Associate

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#### Employee Benefits & Executive Compensation

Meredith Gage is an associate in the Employee Benefits & Executive Compensation Group. Her practice focuses on the design and ongoing compliance of qualified and nonqualified deferred compensation plans as well as health and welfare plans for both employers and service providers. She also provides advice on a variety of employee benefits matters, including executive compensation matters, arising in mergers and acquisitions.

Ms. Gage received her J.D. from the University of Pennsylvania Law School, where she served on the *University of Pennsylvania Journal of Constitutional Law*. She also holds a Master of Bioethics from the University of Pennsylvania Perelman School of Medicine and wrote her thesis on information hierarchies in the state-based Health Insurance Marketplaces. She completed her undergraduate work at the University of Chicago with honors.

#### **Publications**

- "The (Poorly Named) 'Cadillac Tax' Part Two: IRS Provides Further Guidance in Notice 2015-52," *The Self Insurer*, October 2015.
- "The (Poorly Named) 'Cadillac Tax' Part Two: IRS Provides Further Guidance in Notice 2015-52," *ECFC Flex Reporter*, September 2015.
- "Health and Welfare Plan Sponsor Affordable Care Act and 2014 Year End Checklist," *ECFC Flex Reporter*, December 2014.

#### **Education**

- University of Pennsylvania (J.D., 2014)
- University of Pennsylvania (M. Bioethics, 2014)
- University of Chicago (A.B., 2011)

#### **Admitted to Practice**

- Georgia

## Carolyn E. Smith Counsel

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Tax | Employee Benefits & Executive Compensation | Legislative & Public Policy  
| Tax Policy & Regulation

Carolyn brings to her practice a unique blend of technical and policy experience, having served for more than 20 years as counsel to the members and staff of the House Ways and Means and Senate Finance Committees. Carolyn utilizes her substantive background and in-depth experience in the regulatory and legislative process not only to counsel clients on compliance, but also to assist in strategic planning and advocacy in an uncertain and changing regulatory and legislative environment. She focuses her current practice on regulatory, compliance and legislative issues relating to health care, pensions, executive compensation and tax. Her clients include insurers, health plans, financial institutions, pharmaceutical manufacturers, media conglomerates and trade associations.

Before joining Alston & Bird, Carolyn was associate deputy chief of staff of the Congressional Joint Committee on Taxation. During her 20-plus years on the Joint Committee staff, she was responsible for major health, pension and tax legislation from the Tax Reform Act of 1986 through the Pension Protection Act of 2006. In addition to advising Ways and Means and Finance Committee members and staff, she also worked closely with the U.S. Department of the Treasury, the Internal Revenue Service, the House Education and Labor Committee, the Senate Committee on Health, Education, Labor and Pensions, the Pension Benefit Guaranty Corporation and the Department of Labor.

### ***Representative Experience***

- Counsel to a wide range of clients with respect to compliance issues under the Affordable Care Act, including insurers, providers, health plans and employers in a variety of industries.
- Counsel to individual companies, coalitions and trade associations on health care reform regulatory issues.
- Counsel to a publicly held media conglomerate with dynamic, complex benefit structures involving numerous traditional pension, cash balance and savings programs. Issues include plan design, early retirement window programs, compliance and adapting to new legislative and regulatory developments.
- Counsel to a large governmental organization with respect to pension and savings plans.
- Counsel to financial institution clients with respect to planning and compliance issues relating to the executive compensation restrictions under the Troubled Assets Relief Program and counsel to public and private companies with respect to executive compensation issues including Sections 409A and 457A.
- Counsel to pension plans and investment funds regarding ERISA Title I issues and alternative investments.
- Counsel to a variety of clients with respect to current legislative and regulatory issues ranging from pension funding to health care reform.

### ***Publications***

- "ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: AHCA (v2): What's In Store for Employer Plan Sponsors Under House-Passed Bill," *The Self-Insurer*, June 2017.

- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: Whack-A-Mole – IRS Takes Aim At Latest Wellness Program Scheme, But Overly Broad Language Can Be Taken Too Far As Applied To Traditional Coverage,” *The Self-Insurer*, March 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A, QSEHRAs: End-of-Year Legislation Provides a New Health Care Option for Small Employers,” *The Self-Insurer*, February 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A, 2016 Health and Welfare Compliance Highlights: A Walk Down Memory Lane,” *The Self-Insurer*, January 2017.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A, Navigating the Winding Highway of Wellness Program Compliance – A GPS for the EEOC’s Wellness Program Rules,” *The Self-Insurer*, December 2016.
- “ACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A,” *The Self-Insurer*, September 2016.
- “So You Heard About HIPAA Phase 2 Audits. What Should You Do Now?,” *The Self-Insurer*, May 2016.
- “IRS Notice 2015-87 Provides Much Needed Guidance for Account-Based Plans and ACA Employer Shared Responsibility Requirement (IRC 4980H) Part II,” *The Self-Insurer*, April 2016.
- “Supreme Court Strikes Down Vermont Health Data Reporting Law as Applied to Self-Funded ERISA Plans: Ruling Could Have Broader Implications,” *ECFC Flex Reporter*, March 2016.
- “Staying on the Compliance Track: The 2015 Health Benefits Year in Review,” *The Self-Insurer*, February 2016.
- “EEOC’s Proposed Rules for Wellness Programs Under the Genetic Information Nondiscrimination Act (GINA),” *The Self-Insurer*, January 2016.
- “HIPAA Double Take: What Health Plan Sponsors Need to Know (Again),” *The Self-Insurer*, November 2015.
- “The (Poorly Named) ‘Cadillac Tax’ Part Two: IRS Provides Further Guidance in Notice 2015-52,” *The Self-Insurer*, October 2015.
- “The Cadillac Tax Part One: The Potential Impact of the Tax on Account-Based Plans (FSAs, HRAs and HSAs),” *The Self-Insurer*, September 2015.
- “The (Poorly Named) ‘Cadillac Tax’ Part Two: IRS Provides Further Guidance in Notice 2015-52,” *ECFC Flex Reporter*, September 2015.
- “A Supremely Busy Week: The Supreme Court Issues Two Rulings That Impact Health Plans,” *The Self-Insurer*, August 2015.
- “IRS Notice 2015-17: Window Has Closed on Pre-Tax Funding for Individual Major Medical Policies for Employees,” *The Self-Insurer*, July 2015.
- “New EEOC Proposed Rules Require a Gut Check for Wellness Programs,” *The Self-Insurer*, June 2015.
- “Agencies Issue New Proposed Rules for the Summary of Benefits and Coverage,” *The Self-Insurer*, March 2015.
- “Health Care Reform Litigation Update: SCOTUS Takes Another Look at the ACA; The House of Representatives Takes Aim at the President,” *The Self-Insurer*, February 2015.
- “2014 Health Plan Sponsor Year End Checklist,” *The Self-Insurer*, December 1, 2014.
- “IRS Notice 2014-55 Allows New Health Coverage Election Changes,” *The Self-Insurer*, November 3, 2014.
- “To Subsidize or Not to Subsidize – That Is the Question – How *Halbig* and *King* Affect Employer Requirements Under the Affordable Care Act,” *The Self-Insurer*, September 2014.
- “ACA Administrative Simplification Provisions for Health Plans: Time to Apply for an HPID and Prepare for Certification of Compliance,” *The Self-Insurer*, July 2014.

- “The Affordable Care Act and Account-Based Plans: Impact of the ACA on HRAs, FSAs, and HSAs,” *The Self-Insurer*, April 2014.
- “Departments Issue New ACA FAQs on Preventive Services, Cost-Sharing Limits, Fixed Indemnity Insurance, Wellness Programs and Expatriate Health Plans,” *The Self-Insurer*, March 2014.
- “Departments Issue New ACA FAQs on Preventive Services, Cost-Sharing Limits, Fixed Indemnity Insurance, Wellness Programs and Expatriate Health Plans,” *ECFC Flex Reporter*, March 2014.
- “Agency Guidance Strikes a Major Blow for Individual Policy Premium Reimbursement and Stand-Alone Health Reimbursement Arrangements,” *The Self-Insurer*, February 2014.
- “Impact of Supreme Court Same Sex Marriage Ruling on Health Benefits: Part II,” *The Self-Insurer*, January 2014.
- “Health Plans and the Requirement to Apply for a ‘HPID,’” *The Self-Insurer*, October 2013.
- “Friday the 13th: Agencies Take a Chainsaw Approach to HRAs and Employer-Funded Individual Medical (IM) Coverage,” *ECFC Flex Reporter*, September 2013.
- “Private Exchanges and the Impact on Health Coverage,” *The Self-Insurer*, August 2013.
- “CER Fees—Funding the Patient-Centered Outcomes Research Trust,” *The Self-Insurer*, May 2013.
- “New HIPAA Omnibus Rule: Issues for Employer Plan Sponsors and Group Health Plans,” *The Self-Insurer*, April 2013.
- “IRS Issues Game-Changing Regulations Interpreting Health Care Reform’s Pay or Play Requirement, Part Two,” *The Self-Insurer*, March 2013.
- “Recent Proposed Regulations Modify Requirements for Employer Wellness Programs,” *Legal Affairs Bulletin—BlueCross BlueShield Association*, March 2013.
- “2012: The Year In Review (and then some),” *The Self-Insurer*, January 2013.
- “In Wake of Supreme Court Decision, the Affordable Care Act Creates New Opportunities (and New Obligations) for Account Based Plans,” *The Self-Insurer*, August 2012.
- “New Agency Guidance on Required Contraceptive Coverage Under Group Health Plans,” *The Self-Insurer*, June 2012.
- “The Supreme Court Decision on the Affordable Care Act—The Immediate Implications for Group Health Plans,” *ECFC Flex Reporter*, June 2012.
- “What’s Essential About ‘Essential Health Benefits’—HHS Bulletin Creates Issues for All Group Health Plans,” *The Self-Insurer*, March 2012.
- “New Guidance on Distribution of Medical Loss Ratio (MLR) Rebates Creates Issues for Group Health Plan Sponsors,” *ECFC Flex Reporter*, March 2012.
- “PPACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A: New Claim Review Regulations Ease Compliance Burdens for Group Health Plans,” *The Self-Insurer*, August 2011.
- “Court Decision Clears the Air (Somewhat) for Wellness Programs,” *The Checkoff*, The Florida Bar Labor & Employment Law Section, July 2011.
- “Department of Labor Extends Enforcement Grace Period for Certain Internal Claims and Appeals Requirements,” *ECFC Flex Reporter*, June 2011.
- “DOL Extends Enforcement Grace Period for Certain Internal Claims and Appeals Requirements,” *Benefits Compliance Advisor*, May 4, 2011.
- “A Busy End to 2010: IRS Delays Insured Plan Discrimination Requirements and Addresses Health Debit Cards for Prescribed OTCs,” *The Self-Insurer*, February 2011.
- “PPACA, HIPAA and Federal Health Benefit Mandates: Practical Q&A,” *The Self-Insurer*, November 2010.
- “A Look at the PPACA’s New Group Health Plan Claims Review Procedures,” *Benefits & Compensation Law Alert*, November 2010.

- “Interim Final Rules Address Grandfathered Plan Status Under the PPACA,” *Benefits & Compensation Law Alert*, August 2010.
- “Analyzing the Grandfather Regs Under PPACA,” *Employee Benefit News*, June 25, 2010.
- “Health Care Reform: A New Era Begins for Employer-Sponsored Coverage,” *Benefits & Compensation Law Alert*, May 2010.
- “Dissecting the Health Reform Legislation (Part 1),” *Employee Benefit News*, March 26, 2010.
- “COBRA Credit Expansion Enacted as Part of Department of Defense Appropriations Act,” *Benefits & Compensation Law Alert*, February 2010.
- “Senate Moves Health Care Reform One Step Closer,” *Benefits & Compensation Law Alert*, January 2010.
- “Senate Moves Health Care Reform One Step Closer,” *Employee Benefit News*, November 23, 2009.
- “Preserving Retirement Income Security in a 401(k) World,” *The Spark Journal*, Third Quarter 2009.
- “Executive Compensation Restrictions Under the American Recovery and Reinvestment Act of 2009,” *Aspatore Special Report The American Recovery and Reinvestment Act of 2009*, Thompson Reuters/Aspatore, 2009.
- “Caution Ahead! The Long and Winding Road to Fee Disclosure,” *Benefits Law Journal*, Autumn 2008.
- “HEART Act Offers Employers Options with Reservists’ Benefits,” *Benefits & Compensation Law Alert*, July 2008.

#### **Events**

- “The Fiduciary Rule Aftermath – Best Practices for RIAs,” 2016 PLANADVISER National Conference, Orlando, September 13, 2016.
- Conference of Consulting Actuaries, Influencing Public Policy, 2014 Annual Meeting, October 19–22, 2014.
- International Foundation of Employee Benefit Plans, 60th Annual Employee Benefits Conference, Late-Breaking News on the Health Care Front, October 12-15, 2014.
- International Foundation of Employee Benefit Plans, 60th Annual Employee Benefits Conference, National Retirement Plan Approaches, October 12-15, 2014.
- NCCMP Annual Conference, The Affordable Care Act, Sept. 22-24, 2014.
- Marquette School of Law, A Day of CLE, The Hottest Legal Issue-Affordable Care Act Changes and Challenges, September 19, 2014.
- International Foundation of Employee Benefit Plans, Washington Legislative Update, Tax Reform or Changes without Reform, May 5-6, 2014.
- 2010 Enrolled Actuaries Meeting, April 11–14, 2010.
- 2009 Enrolled Actuaries Meeting, General Session, Retirement Policies Under the New Congress, March 29–April 1, 2009.
- Employee Benefits: What’s on the Horizon-Regulatory, Judicial, and Legislative Initiatives—A Comprehensive Annual Update Conference, November 17–18, 2008.
- Section 409A Revisited: Ensuring Compliance in 2008, July 9, 2008.
- 2008 SPARK National Conference, June 8, 2008.
- Tax Conference on Hedge Fund Structuring & Compensation, May 28, 2008.
- TEI’s 58th Midyear Conference, April 6–9, 2008.
- Experts’ Guide to Employee Benefits Research, January 24, 2008.
- National Association of State Treasurers Treasury Management Conference, December 4, 2007.

## ***News***

- Carolyn Smith Featured in *Tax Notes Today*, June 16, 2009.
- Carolyn Smith Quoted in *BNA Daily Tax Report*, July 18, 2008.
- Alston & Bird Hosts 409A Webinar, June 20, 2008.

## ***Professional & Community Engagement***

- American College of Employee Benefits Counsel, Fellow

## ***Education***

- University of California, Berkeley (J.D., 1981)
- University of California, San Diego (B.A., 1978)

## ***Admitted to Practice***

- District of Columbia
- California

## Earl Pomeroy Senior Counsel

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Health Care | Legislative & Public Policy | Tax Policy & Regulation | Insurance  
| Insurance Litigation & Regulation | Policyholder Class Action Defense | High  
Exposure Claims, Coverage & Bad Faith Defense | Insurance-Related Antitrust  
Defense | Regulatory Guidance | Policy Drafting & Product Development |  
Agribusiness

Former Congressman Earl Pomeroy brings 26 years of regulatory and legislative experience to his present position as senior counsel at Alston & Bird.

Earl's practice focuses his practice on matters before the legislative and executive branches of government at the federal level as well as work before financial regulators at the state government level.

Earl has been an influential participant in financial services regulation as it has evolved over the last quarter century. More than 20 years ago, as president of the National Association of Insurance Commissioners, he advanced reforms to strengthen solvency oversight in state insurance departments that were widely adopted, substantially improving the quality of state insurance regulation.

Earl was the only Insurance Commissioner in the House during most of his tenure. He applied this unique background as an influential leader on the Ways and Means Committee regarding tax and regulatory issues involving the financial services industry. Drawing upon his background as North Dakota Insurance Commissioner, president of the National Association of Insurance Commissioners, nine term Member of Congress and senior member of the House Ways and Means Committee, Earl's practice areas include financial services regulation, health care policy, pensions, tax policy, energy, and agriculture.

### ***Publications***

- "Tax reform: Starting place for jobs, growth," *The Hill*, December 9, 2016.
- "A Legacy of Pensions: Interview with Josh Gotbaum," *Society of Actuaries Pension Section*, May 2015.

### ***Education***

- University of North Dakota (J.D., 1979)
- University of North Dakota (B.A., 1975)

### ***Admitted to Practice***

- District of Columbia
- North Dakota



# **LACERA: State Legislative Advocacy Services RFP Response (Submitted June 2017)**

## **Supplemental Response**

August 2017



August 10, 2017

LACERA  
Attention: Barry Lew  
Legislative Affairs Officer  
300 North Lake Avenue, Suite 620  
Pasadena, CA 91101  
[blew@lacera.com](mailto:blew@lacera.com)

Re: Alston & Bird's Supplemental Response to the June 2017 Response submitted to the Los Angeles County Employees Retirement Association (LACERA) RFP for State Legislative Advocacy Services Concerning Health, Pension and Plan Administration Issues

Dear Mr. Lew:

Enclosed please find Alston & Bird's supplemental response to provide State Legislative Advocacy Services. We appreciate the opportunity to supplement our original response to demonstrate that we have the experience to meet your needs.

LACERA is a valued client of the firm. Dominique Shelton leads our team providing counsel to LACERA in safeguarding the plan information and operations in service to participants and the public. We believe in the mission of LACERA and are honored to be a part of the team.

These supplemental materials address the two areas you requested more in-depth information, specifically our knowledge of the legislative and regulatory process and the ability to facilitate access to and effective communication with decision-makers; and second, a strong base of substantive knowledge and experience in the State Issues, as defined.

We hope this additional information will give you the assurances that we can meet your needs in state legislative advocacy. Alston & Bird would be pleased to add these services to our current representation of LACERA for its the cybersecurity and privacy needs.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Maureen F. Gorsen".

Maureen F. Gorsen



# Table of Contents

Legislative and Regulatory Process Experience ..... 1  
Substantive Knowledge in State Issues Experience ..... 3  
Sample Bill Tracking Report ..... 6

## Supplemental Policy Experience

Alston & Bird has the skill and experience to assist LACERA with the legislative and regulatory process, including knowledge of the process and the ability to facilitate access to and effective communication with decision-makers; and second, a strong base of substantive knowledge and experience in the State Issues, as defined.

Going topic by topic as outlined in the LACERA RFP, below is our proposed approach to address each legislative, regulatory and policy need identified by LACERA in its request for proposal.

### Legislative and Regulatory Process Experience

Alston & Bird has developed a multi-disciplinary public affairs team and legal resources to provide LACERA with highest caliber program for legislative advocacy services, ensuring that LACERA and its issues remains “front and center” with California policy makers and opinion leaders at all times. Our primary objective is to develop a high quality legislative program and more impactful presence for LACERA in the State Capitol and Sacramento, and to both inform and involve LACERA with priority issues affecting members.

The following is an outline of Alston & Bird’s Strategic Plan for implementing a premier Legislative Advocacy Services Program for LACERA.

### Legislative Analysis & Development of Legislative Strategy

- Perform an extensive analysis on past legislative efforts and their efficacy by assessing historic strategies, tactics, messaging, etc. Gain a deeper understanding of which efforts were successful and utilized and opportunities for enhancement or change.
- Suggest a legislative strategy retreat/working session with key LACERA legislative and leadership staff, Alston & Bird team, to evaluate methods, protocols, and experiences and determine successful trends and areas of challenge.
- Suggest information gathering from key stakeholders to assess LACERA’s legislative effectiveness, reputation and standing. Could be in the form of a survey, as well as individual interviews, among LACERA members, key legislators and staff, relevant associations and entities that LACERA interacts with.
- With input from LACERA Board/Leadership and drawing on our own extensive policy and legislative advocacy experience, draw decisive conclusions and work to determine priorities and pathways and create an aggressive and operative legislative advocacy services plan for 2018 and revisit process annually.

### Legislative Advocacy

- Establish an active and visible presence with key legislators and committees, including introductory and ongoing meetings between LACERA legislative staff, consultant and key LACERA leadership. This will include regular meetings, both in Sacramento/Capitol and locally, with members and staff of:
  - Senate Standing Committee on Public Employee and Retirement, including Senators Pan, Morrell, Leyva, Moorlach, Portantino, Beall and Hall
    - Participate in the 2<sup>nd</sup> and 4<sup>th</sup> Monday meetings at 2pm
  - Assembly Committee on Public Employees Retirement and Social Security, including Assembly Members Rodriguez, Allen, Brough, Cervantes, Cooley, Cooper and O’Donnell

- Participate in the 1<sup>st</sup> and 3<sup>rd</sup> Wednesday meetings at 9 am
  - Legislative Leaders (Speaker of Assembly, Senate Pro-Tem)
  - Other Key Committees (Health, Labor & Employment, etc).’
  - Legislators in both Senate and Assembly representing Los Angeles County
  - Governor’s Staff and Administration and state entities (PERS, STRS, Health & Human Services, etc.)
  - Relevant State Constitutional Officers (State Treasurer)
- Provide regular testimony in key legislative and regulatory hearings by LACERA legislative staff and, as appropriate, key LACERA leaders and members.
- Provide regular development of “Support” or “Oppose” letters on behalf of LACERA, to submit to respective committees, consultants and members of the Legislature and Administration.
- Regularly discuss and persuasively advocate for LACERA’s vision for its members’ pension and benefits plans.
- Present potential (LACERA-approved) legislative bill ideas and secure best possible author(s).
- Assess through these meetings the issue areas of concern to the members and ascertain whether or not there might be attendant legislation introduced.

#### Legislative Monitoring, Reporting & Updating

- Monitor introduced and amended legislation, as well as emerging policy trends through the entire legislative calendar utilizing both human resources in the Capitol, as well as technologies designed expressly for that purpose
- Regularly attend key legislative committees, agencies, regulatory bodies and related entities to determine new or modified legislation and regulation developments
- Track legislation with tracking report throughout legislative process. (Sample Tracking Report attached)
- Development of regular monthly report (and more frequently, as needed) – in approved format about status, key deadlines and recommended involvement for proposed and actual legislation, regulations and activity for LACERA
- Regular communication with LACERA Board – four appearances per year – and also with members, as needed, including “alert” updates for priority legislation and concerns, conference calls/webinars, organization newsletters or collaterals.

#### Communications with Interested Parties

- Coalitions: Engage in and develop key coalitions, stakeholder groups and working groups most relevant to and impacting LACERA members. Combine resources with key groups to further advocate and prevail on important issues.
- Media: Work with LACERA communications staff to identify and cultivate relationships with key California news outlets and reporters to maintain a regular pipeline of information and updates for appropriate media coverage on LACERA-specific issues and legislation. Seek out opportunities for opinion-editorials, letters-to-the-editor, feature stories, and key interviews on television, radio programs, newspapers, trade publications, online/blogs. Help to properly train and update LACERA staff and members featured in these media opportunities.

### Active Presence – Raise Awareness

- In addition to an enhanced engagement with key coalitions, ensure that LACERA has a “seat at the table” at key events and venues, including state conferences, legislative forums, expos, etc.
- Develop regular collaterals to be delivered to policymakers, administration officials, third house (lobbying community), media, and related communities.
- Work with LACERA staff to enhance LACERA website and materials to better reflect key policy issues, legislation and “call to action” efforts among members and the community.
- Regular drum-beat of LACERA issues and updates via social media (Twitter, Facebook, YouTube video clips).

### Special Projects

- Explore with LACERA leadership opportunities for special projects that will further burnish the organization’s image and engagement as a leader on key legislative, regulatory and policy issues. Activities may include: Annual Retirement Policy Forum (based in LA or Sacramento), Workshops or Seminars for Members and the Community about Key Legislation and Issues in Play or Looming, LACERA “Local Lobby Day” activity for members to meet with L.A. area legislators, regulators and others to share concerns and issues.

### **Substantive Knowledge and Experience in the State Issues, As Defined**

Alston & Bird has the strong base of substantive knowledge and experience LACERA is seeking. We have extensive experience working with public pension plans. Our clients include the Federal Reserve Board Office of Employee Benefits, the Florida Retirement System Pension Plan, and numerous other governmental pension plans. We represented public pension plans in the Supreme Courts of Florida and Illinois in state constitutional litigation relating to pension reform laws. We have also represented actuarial firms in litigation involving over 40 public pension plans in both federal and state courts. In addition, one of our team members, David Godofsky, was the actuary for over 20 state, municipal and governmental hospital pension plans for many years before joining Alston & Bird.

- Disability retirement benefits

Our employee benefits group advises and represents numerous clients relating to disability retirement benefits, both in compliance matters and in litigation. We advise at least 50 pension plans that have disability retirement benefits, and we defend several lawsuits each year relating to disability benefits.

- Retiree healthcare benefits

We have extensive experience advising clients on retiree healthcare benefits, both in health & welfare plans and in pension plans, and in litigating matters involving retiree healthcare benefits. Our constitutional litigation in the Illinois Supreme Court related to retiree healthcare benefits within a public pension plan. We have dozens of clients, both public sector and private sector, that offer retiree healthcare benefits. We also advise one of the largest actuarial firms in the U.S. with respect to its public sector retiree healthcare practice.

- Pension reform legislation and initiatives

We have advised numerous clients on pension reform legislation and initiatives, and defended clients in several litigation matters involving pension reform legislation. Earl Pomeroy is a former congressman who was heavily involved in pension reform legislation in Congress. Carolyn Smith was one of the top staffers on the Joint Committee on Taxation for the U.S. Congress, and worked on several pension and employee benefits matters.

- Information and data privacy and protection

Alston & Bird is currently counsel to LACERA on these issues, and will integrate this work in providing state legislative advocacy for LACERA.

We have been advising some of the most recognizable brands on privacy and data protection matters for nearly 20 years. Our multidisciplinary team assists clients at every step of the information life cycle, from developing and implementing corporate policies and procedures to employee concerns, representation on transactional matters, public policy and legislative issues, and tough litigation. Areas of focus include emerging technologies, Big Data, vendor management, payment systems, health care and privacy regulatory enforcement. Our team members bring valuable, extensive experience to clients and includes a number of former government officials – special assistant attorney general of California, White House privacy official under two administrations, assistant U.S. attorney and Cyber & Intellectual Property Crimes Section chief, and DOJ cybercrime prosecutor.

- Fiduciary duties of the board

We advise dozens of public sector and private sector employers on their fiduciary duties with respect to pension plans and pension investments. A significant portion of our employee benefits litigation practice relates to fiduciary duties, investments, and payment of expenses from retirement plans.

- Pension related provisions of the California Constitution

We have extensive experience with state constitutional provisions relating to pensions and pension anti-cutback rules. We have advised and represented clients in significant matters involving state constitutional rules in Florida, Georgia, Illinois, Louisiana, North Carolina, Rhode Island and Tennessee. California precedents are frequently cited in litigation in other states, and, if retained, we will ensure that we master California constitutional rules and precedents quickly and efficiently. LACERA would be our firm's first California pension client, and we believe our nationwide experience will be invaluable as we assist in advocacy in Sacramento.

- Public pension plan operations, administration

We are confident that few law firms can match our experience in day-to-day administrative and operational matters with respect to pension plans in general, and public pension plans in particular. We advise numerous public pension plans, and at least three actuarial firms that have substantial public sector practices. Our clients include the Florida Retirement System and the Retirement Plan for Chicago Transit Authority Employees. Four of our employee benefits attorneys worked in actuarial firms with significant public sector practices before joining A&B. As actuary for over 20 public pension plans, David Godofsky accumulated experience on administrative and operational matters that is unique among lawyers in private practice.

- CERL – County Employees Retirement Law of 1937/PEPRA - California Public Employees’ Pension Reform Act of 2013

CERL and PEPRA combine to form a comprehensive statute combining elements of a “plan document” with a governing structure. We have worked with several public plans that have elements similar to CERL and PEPRA. If retained by LACERA, we will master those portions of the statutes that apply to counties of the first class (Los Angeles).

- SACRS – State Association of County Retirement Systems
- CALAPRS – California Association of Public Retirement Systems
- NCPERS – National Conference on Public Employee Retirement Systems
- NAPPAs – National Association of Public Pension Attorneys

As part of our legislative advocacy (described above), we will participate in key meetings for these associations sending the appropriate person depending on LACERA’s needs. For instance, if the need is more than monitoring and reporting, but for a high level leader, we would deploy former Congressman Earl Pomeroy who has deep ties with the national public pension associations, including NC PERS, from the key role he played as a Champion for public pensions while serving as a Member of the House Ways and Means Committee, as well as his relationships and network (e.g., a former staff member of Earl’s, Diane Oakley, is the CEO of NIRS (National Institute of Retirement Security), a think tank dedicated to supporting public pension defined benefit funds.)

- Brown Act/Public Records Act/Political Reform Act/Conflicts of Interest/Ethics Rules

Alston & Bird has a robust administrative law practice across many disciplines, and regularly provides advice on compliance with laws government public agencies. We have represented many public agencies such as local school districts, transportation agencies, and water districts, as well as the regulated entities before public agencies in all areas of public agency law. As former General Counsel of two Cabinet level agencies, the California Natural Resources Agency and the California Environmental Protection Agency, Ms. Gorsen oversaw compliance with public meetings, public records, political reform act and conflicts rules for over 20 departments. Ms. Gorsen also taught California Administrative Law at UC Santa Barbara for 5 years. While this RFP does not seek such legal services, our knowledge of the practical realities that face local government decision makers and administrators will enable us to spot issues and develop responses to the legislative proposals affecting the powers of public agencies, particularly LACERA.

## County Pension Legislation Sorted by Subject 7.20.2017

### • Information and data privacy and protection

**[AB 241](#) (Dababneh D) Personal information: privacy: state and local agency breach.**

**Current Text:** Introduced: 1/30/2017 [Text](#)

**Status:** 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. on 5/26/2017) (May be acted upon Jan 2018)

**Location:** 5/26/2017-A. 2 YEAR

Desk	Policy	2 year	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered	
1st House				2nd House								

**Summary:** Existing law requires a person or business conducting business in California and any state or local agency, as defined, that owns or licenses computerized data that includes personal information, as defined, to disclose a breach in the security of the data to a resident of California whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person in the most expedient time possible and without unreasonable delay, as specified. Existing law requires a person or business, if it was the source of the breach, to offer to provide appropriate identity theft prevention and mitigation services at no cost to the person whose information was or may have been breached if the breach exposed or may have exposed the person's social security number, driver's license number, or California identification card number. This bill also would require a state or local agency, if it was the source of the breach, to offer to provide appropriate identity theft prevention and mitigation services at no cost to a person whose information was or may have been breached if the breach exposed or may have exposed the person's social security number, driver's license number, or California identification card number. This bill contains other related provisions.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
		<ul style="list-style-type: none"> <li>• Information and data privacy and protection</li> </ul>

### Brown Act

**[AB 428](#) (Ridley-Thomas D) Local government: the Ralph M. Brown Act.**

**Current Text:** Enrolled: 7/19/2017 [Text](#)

**Status:** 7/17/2017-Read third time. Passed. Ordered to the Assembly. In Assembly. Ordered to Engrossing and Enrolling.

**Location:** 7/17/2017-A. ENROLLMENT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered	
1st House				2nd House								

**Summary:** The Ralph M. Brown Act requires that all meetings of a legislative body of a local agency be open and public, except that closed sessions may be held under prescribed circumstances. Existing law authorizes the legislative body of a local agency to use teleconferencing for the benefit of the public and the legislative body of a local agency in connection with any meeting or proceeding authorized by law provided that the teleconferenced meeting or proceeding complies with all otherwise applicable requirements and provisions of law relating to a specific type of meeting or proceeding. Existing law, until January 1, 2018, authorizes a health authority that conducts a teleconference meeting to count members who are outside the jurisdiction of the authority toward the establishment of a quorum when participating in the teleconference if at least 50% of the number of members that would establish a quorum are present within the boundaries of the territory over which the authority exercises jurisdiction, and the health authority provides a teleconference number, and associated access codes, if any, that allows any person to call in to participate in the meeting, as specified. This bill would extend the operation of these provisions relating to the establishment of a quorum for teleconferenced meetings of a health authority indefinitely. This bill contains other related provisions and other existing laws.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
	Low	Brown Act

### Budget

**[AB 97](#) (Ting D) Budget Act of 2017.**



**Current Text:** Chaptered: 6/27/2017 [Text](#)

**Last Amend:** 6/10/2017

**Status:** 6/27/2017-Approved by the Governor. Chaptered by Secretary of State - Chapter 14, Statutes of 2017.

**Location:** 6/27/2017-A. CHAPTERED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** This bill would make appropriations for the support of state government for the 2017-18 fiscal year. This bill contains other related provisions.

**Position**

**Priority**

**Subject**

Medium

Budget

**[AB 119](#)**

**(Committee on Budget) State government.**

**Current Text:** Chaptered: 6/27/2017 [Text](#)

**Last Amend:** 6/12/2017

**Status:** 6/27/2017-Approved by the Governor. Chaptered by Secretary of State - Chapter 21, Statutes of 2017.

**Location:** 6/27/2017-A. CHAPTERED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** (1)Existing law, including the Meyers-Milias-Brown Act, the Ralph C. Dills Act, the Trial Court Employment Protection and Governance Act, the Trial Court Interpreter Employment and Labor Relations Act, and the Los Angeles County Metropolitan Transportation Authority Transit Employer-Employee Relations Act, as well as provisions commonly referred to as the Educational Employment Relations Act and the Higher Education Employer-Employee Relations Act, regulates the labor relations of the state, the courts, and specified local public agencies and their employees. Existing law establishes the Public Employment Relations Board and prescribes its powers and duties in relation to these acts. These acts grant specified public employees of these entities the right to form, join, and participate in the activities of employee organizations of their choosing and requires public agency employers, among other things, to meet and confer with representatives of recognized employee organizations and exclusive representatives on terms and conditions of employment. This bill would require the public employers regulated by the acts described above to provide the exclusive representative of those employees mandatory access to its new employee orientations. The bill would define new employee orientation as the onboarding process, whether in person, online, or through other means, pursuant to which new public employees are advised of their employment status, rights, benefits, duties, and responsibilities, or any other employment-related matters. The bill would require that an exclusive representative receive not less than 10 days' notice in advance of an orientation, except as specified. The bill would require the structure, time, and manner of exclusive representative access to be determined through mutual agreement between the employer and the exclusive representative, provided that the bill would prescribe a specified process for negotiating access, which would include compulsory interest arbitration, as defined. The bill would require the costs of arbitration to be shared, except in cases in which the public employer objects to the procedure and requests an alternative arbitrator, as specified. This bill contains other related provisions and other existing laws.

**Position**

**Priority**

**Subject**

Medium

Budget

**[SB 131](#)**

**(Committee on Budget and Fiscal Review) State public employment: memorandum of understanding: approval.**

**Current Text:** Chaptered: 4/30/2017 [Text](#)

**Last Amend:** 4/5/2017

**Status:** 4/28/2017-Approved by the Governor. Chaptered by Secretary of State. Chapter 6, Statutes of 2017.

**Location:** 4/28/2017-S. CHAPTERED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** (1)Existing law provides that a provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees that requires the expenditure of funds does not become effective unless approved by the Legislature in the annual Budget Act. This bill would approve provisions requiring the expenditure of funds in the memorandum of understanding entered into between the state employer and State Bargaining Unit 16, Physicians, Dentists, and Podiatrists. This bill contains other related provisions and other existing laws.

**Position**

**Priority**

**Subject**

Budget

**[AB 1311](#) (Allen, Travis R) Public Employees' Retirement System: board.**

**Current Text:** Introduced: 2/17/2017 [Text](#)

**Status:** 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was P.E.,R. & S.S. on 3/13/2017)(May be acted upon Jan 2018)

**Location:** 4/28/2017-A. 2 YEAR

Desk	<b>2 year</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** The Public Employees' Retirement Law (PERL) establishes the Public Employees' Retirement System (PERS), which provides a defined benefit to members of the system, based on final compensation, credited service, and age at retirement, subject to certain variations. Existing law creates the Board of Administration of PERS for the purpose of governing the system and prescribes the composition of the board. Existing law requires that one member of the board be a member of the public chosen jointly by the Speaker of the Assembly and the Senate Committee on Rules. Existing law further requires that an official of a life insurer be appointed to the board by the Governor. This bill would revise the composition of the board. The bill would add to the board 2 persons, appointed at the pleasure of the Governor, who represent the public, have financial expertise, and are not interested in the system, as specified. The bill would replace the official of a life insurer, whom the Governor is currently authorized to appoint, with a gubernatorial appointee who has expertise in health insurance and is not interested in the system. The bill also would require the board member representing the public, appointed by the Speaker of the Assembly and Senate Committee on Rules, to have financial expertise and not be interested in the system. This bill contains other related provisions and other existing laws.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
		CalPERS Administration and Duties

**[AB 1366](#) (Brough R) California Public Employees' Pension Reform Act of 2013.**

**Current Text:** Introduced: 2/17/2017 [Text](#)

**Status:** 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 2/17/2017) (May be acted upon Jan 2018)

**Location:** 5/12/2017-A. 2 YEAR

<b>2 year</b>	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. This bill would make nonsubstantive changes to the provision of PEPRA that makes it applicable to those employees.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
		CalPERS Administration and Duties

**[SB 32](#) (Moorlach R) California Public Employees' Pension Reform Act of 2018.**

**Current Text:** Amended: 3/2/2017 [Text](#)

**Last Amend:** 3/2/2017

**Status:** 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was P.E. & R. on 3/8/2017) (May be acted upon Jan 2018)

**Location:** 4/28/2017-S. 2 YEAR

Desk	<b>2 year</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** (1)The Public Employees' Retirement Law creates the Public Employees' Retirement System (PERS), and the Teachers' Retirement Law creates the State Teachers' Retirement System (STRS), for the provision of service, disability, and other benefits to members. Existing law vests the Teachers' Retirement Board, which administers STRS, and the Board of Administration of PERS with fiduciary responsibility over the assets of their respective retirement systems and requires the boards to, among other things, employ public accountants who are not in public employment to audit the financial statements of the systems, as specified. This bill would create the Citizens' Pension Oversight Committee to serve in an advisory role to the Teachers' Retirement Board and the Board of Administration of PERS. The bill would require the committee, on or before January 1, 2019, and

annually thereafter, to review the actual pension costs and obligations of PERS and STRS and report on these costs and obligations to the public and would require reports of audits of STRS and PERS conducted by the public accountants described above to be filed with the committee for this purpose.

(2) Under the Public Employees' Retirement Law, benefits provided by PERS are funded by employer and employee contributions and investment returns. Existing law requires the Board of Administration of PERS to set and adjust employer contribution rates in relation to the system's actuarial liability and provides for the deposit of employer contributions into the Public Employees' Retirement Fund, a continuously appropriated fund. Existing law authorizes the board to adopt a funding period of 30 years to amortize unfunded accrued actuarial obligations for current and prior service for the purpose of determining employer contribution rates for contracting agencies and school employers and to adopt an amortization period of 40 years for any unfunded actuarial liability for the benefits applicable to all state miscellaneous members and all state peace officer/firefighter members. This bill would require the board to determine what the level of the unfunded liability of PERS was in 1980 and would further require the board to reduce the unfunded liability of PERS to that level, to be achieved by 2030, with the goal of fully funding PERS. The bill, in any year in which the unfunded actuarial liability of PERS is greater than zero, would require the board to increase the employer contribution rate otherwise provided by law for the state, contracting agencies, and school employers by 10 percent. By increasing deposits into a continuously appropriated fund, the bill would make an appropriation.

(3) Existing law prescribes different benefit formulas for members of PERS depending on a member's classification and date of entry into the system, among other factors. This bill would require the Board of Administration of PERS, on or before January 1, 2019, to develop and submit to the Legislature for approval a hybrid plan consisting of defined benefit and defined contribution components, as specified, and would require the plan to be applied to members who elect to be subject to the plan or who are first employed by the state, a contracting agency, or a school employer and become members of the system on or after the approval of the plan by the Legislature. The bill would further require the board, on or before January 1, 2019, to review the duties of officers and employees in positions included in the safety member classification pursuant to certain provisions of the Public Employees' Retirement Law and reclassify the positions according to specified criteria. The bill would apply this reclassification to persons who are first employed by the state and become state members of PERS on or after January 1, 2018.

(4) The California Public Employees' Pension Reform Act of 2013 (PEPRA), on and after January 1, 2013, requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, provides that the pensionable compensation of a new member of the system is the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members, as specified. PEPRA also requires the final compensation used to determine a retirement benefit to be paid to the new member to be the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months, or at least 3 consecutive school years if applicable, as specified. This bill would prohibit a public retirement board from deeming certain forms of pay to be pensionable compensation and would make related legislative findings and declarations. This bill would enact the California Public Employees' Pension Reform Act of 2018 (PEPRA 2018). The bill, for an individual who becomes a member of any public retirement system, as defined, for the first time on or after January 1, 2018, and who was not a member of any other public retirement system prior to that date, would require the final compensation used to determine the member's retirement benefits to be the highest annual pensionable compensation earned by the member during a period of at least 60 consecutive months, or at least 5 consecutive school years if applicable, as specified. The bill would also provide that if the member leaves the employment of a public employer participating in a public retirement system for other employment, as specified, and is subsequently reemployed by the public employer at least one year later, the member will be subject to the same benefits, contributions, and other terms and conditions applicable to an individual who becomes a member of the public retirement system for the first time on the date of the member's return, for service rendered on or after that date.

(5) Existing law provides for the application of cost of living adjustments to allowances paid to persons retired under, or survivors or beneficiaries of members or persons retired under, various public retirement systems. The bill, as part of PEPRA 2018, would prohibit a public retirement system from making a cost of living adjustment to any allowance payable to, or on behalf of, a person retired under the system, or to any survivor or beneficiary of a member or person retired under the system, for any year beginning on or after January 1, 2018, in which PERS or STRS is not fully funded.

Position	Priority	Subject
		CalPERS Administration and Duties, Retirement Benefits

**CERL**

**AB 526**      **(Cooper D) County employees' retirement: districts: retirement system governance.**  
**Current Text:** Amended: 5/18/2017    [Text](#)

**Last Amend:** 5/18/2017

**Status:** 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10). (Last location was P.E. & R. on 5/18/2017)(May be acted upon Jan 2018)

**Location:** 7/14/2017-S. 2 YEAR

Desk	Policy	Fiscal	Floor	Desk	2 year	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** (1)The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to their employees. CERL defines a district for these purposes, includes specified county retirement systems within that definition, and permits a district to participate in CERL retirement systems. CERL generally provides that the personnel of a county retirement system are county employees, subject to county civil service provisions and salary ordinances, but also authorizes the boards of retirement in specified counties to adopt provisions providing for the appointment of personnel who are to be employees of the retirement system, as well as other administrative provisions that reflect the independence of the retirement system from the county. This bill would define the Sacramento County retirement system as a district under CERL. The bill would authorize the board to adopt, by resolution, specified administrative provisions that would classify various personnel of the retirement system as employees of the retirement system and not employees of the county. The bill would require the retirement system to notify, and to meet and discuss with, participating employers in the retirement system, the employees of the system, and specified employee organizations, regarding the retirement system's intent to exercise this authority at least 60 days before considering a resolution to make these provisions applicable. The bill would grant an employee organization representing people who work for the retirement system, and an unrepresented person who works for the retirement system, the right to elect to be employees of the retirement system, which would be irrevocable, except as specified, and the status of the affected employee positions would remain changed for successor employees. In regard to county employees who would become retirement system employees, the bill would prescribe requirements in connection with their compensation and employment benefits and status. These provisions would include maintaining their county retirement benefits that would otherwise be reduced under PEPRRA, keeping their employment classifications, providing for the transfer of leave balances accrued as county employees to the retirement system, as specified, and affording employees the opportunity to continue participation in group health and dental plans, among other things. The bill would prescribe requirements regarding labor negotiations and the continuity of labor agreements. The bill would grant the retirement system the authority to adopt the regulations and enter into the agreements necessary to implement them. The bill would require counties to cooperate and act in a timely manner to establish and implement agreements in this regard. The bill would make technical and conforming changes. This bill contains other related provisions and other existing laws.

**Position**                      **Priority**    **Subject**  
CERL

**SB 671**      **(Moorlach R) County employees' retirement: retirement funds: transfers.**

**Current Text:** Chaptered: 7/17/2017 [Text](#)

**Last Amend:** 5/4/2017

**Status:** 7/17/2017-Approved by the Governor. Chaptered by Secretary of State. Chapter 76, Statutes of 2017.

**Location:** 7/17/2017-S. CHAPTERED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to county and district employees. CERL requires a county auditor to certify to the retirement board, at the end of each month or pay period, the compensation earnable paid to members of the retirement association and to transfer the applicable percentage of the county's annual contribution to the retirement fund, as specified. CERL authorizes the board of supervisors to authorize the county auditor to make an advance payment of all or part of the county's estimated annual contribution if the payment is made within 30 days after the county's fiscal year begins. Existing law also authorizes a district that is a member of the retirement system in the County of San Bernardino to make advance payments, as described above. This bill would specify that the authority to make advance payments, described above, does not prevent the board of supervisors or governing body of a district from making advance payments for the estimated annual county or district contributions for an additional year or partial year if certain requirements are satisfied. The bill would revise the provisions currently applicable to a district that is a member of the retirement system in the County of San Bernardino to make them applicable to districts that are members of county retirement systems generally. The bill would make a variety of technical and conforming changes.

**Position**                      **Priority**    **Subject**  
CERL,  
Retirement  
Benefits

**[AB 106](#)**

**(Ting D) Public social services: 1991 Realignment Legislation and IHSS Maintenance of Effort and collective bargaining.**

**Current Text:** Amended: 6/12/2017 [Text](#)

**Last Amend:** 6/12/2017

**Status:** 6/14/2017-Read second time. Ordered to third reading.

**Location:** 6/14/2017-S. THIRD READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered	
1st House				2nd House								

**Calendar:** 7/20/2017 #59 SENATE SEN THIRD READING FILE - ASM BILLS

**Summary:** (1)Existing law provides for the allocation of funds appropriated from the continuously appropriated Local Revenue Fund for the distribution of sales tax and motor vehicle license fee moneys to local agencies for the administration of various health, mental health, and public social service programs (1991 Realignment funds).Existing law establishes the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization. Existing law requires the state and counties to share the annual cost of providing in-home supportive services, with the state paying to the county 65% of the nonfederal cost and each county paying 35% of the nonfederal cost. Notwithstanding that provision, existing law requires all counties to have a County IHSS Maintenance of Effort (MOE) and requires counties to pay the County IHSS MOE instead of paying the nonfederal share of IHSS costs, as specified.Existing law permits services to be provided under the IHSS program through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium. Under existing law, any public authority created under the IHSS program is deemed to be the employer of in-home support services personnel within the meaning of the Meyers-Milias Brown Act, which governs local employer-employee relations. Existing law also provides that any nonprofit consortium contracting with a county is deemed the employer of in-home supportive services personnel for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.Existing law establishes the California In-Home Supportive Services Authority, referred to as the Statewide Authority, and requires the Statewide Authority to be the entity authorized to meet and confer in good faith regarding wages, benefits, and other terms and conditions of employment with representatives of recognized employee organizations for any individual provider who is employed by a recipient of supportive services, as specified. Existing law establishes the In-Home Supportive Services Fund within the State Treasury. Existing law requires that moneys in the fund be made available, upon appropriation by the Legislature, to the Statewide Authority for the purposes of funding its functions.Existing law establishes the In-Home Supportive Services Employer-Employee Relations Act, which serves to resolve disputes regarding wages, benefits, and other terms and conditions of employment between the Statewide Authority and recognized employee organizations providing in-home supportive services. Under the act, the Statewide Authority is deemed to be the employer of record, for purposes of collective bargaining, of individual providers of in-home supportive services in each county, as specified.This bill would revise and recast provisions relating to 1991 Realignment Legislation and the County IHSS MOE. Among other things, the bill would eliminate the existing County IHSS MOE and instead implement a new costsharing arrangement between the state and counties, as specified. The bill would establish a statewide total County IHSS MOE base for these purposes, as specified, and establish a process for determining each county’s share of that amount. The bill would appropriate moneys from the General Fund to offset a portion of IHSS costs incurred by the counties. The bill would further authorize a portion of those costs to be offset from other related 1991 Realignment funds, as specified. Under certain circumstances, the bill would authorize a county to request loans from the state for purposes of implementation. The bill would require the Department of Finance to implement these provisions, as specified. The bill would make conforming changes to related provisions, including to certain 1991 Realignment fund provisions in the Revenue and Taxation Code. The bill would freeze reimbursement rates for certain services under limited circumstances.The bill would also repeal provisions relating to, and thereby eliminate, the Statewide Authority, the IHSS Fund, and the IHSS Employer-Employee Relations Act. The bill would require, until January 1 2020, a specified mediation process to be held if a public authority or nonprofit consortium fails to reach agreement on a bargaining contract with its in-home supportive services workers by January 1, 2018, as prescribed. The bill would make conforming changes to related provisions. By creating new duties for local entities relating to collective bargaining under the IHSS program, the bill would impose a state-mandated local program.(2)Existing law conditions implementation of the Coordinated Care Initiative (CCI), on whether the Director of Finance estimates that the Coordinated Care Initiative will generate net General Fund savings, as specified. Existing law requires these savings to be calculated based, in part, on estimated program costs approved by the federal government. This bill would clarify that the calculation of General Fund savings is based on the estimated costs of the entire CCI program, as defined, and not only those parts of the program subject to federal approval.(3)The bill



completed years of credited state service at retirement, with 50% after 15 credited years of service and 100% after 25 or more years of service, for an employee of the state, the California State University, and the Legislature, who is employed by the state for the first time and who becomes a state member of the Public Employees' Retirement System on or after January 1, 2018. This bill contains other related provisions and other existing laws.

**Position**                      **Priority**    **Subject**  
 Health Benefits

**Investment/Divestment**

**AB 20 (Kalra D) Public employee retirement systems: divestment: Dakota Access Pipeline.**

**Current Text:** Amended: 7/12/2017 [Text](#)

**Last Amend:** 7/12/2017

**Status:** 7/12/2017-Read second time and amended. Re-referred to Com. on APPR.

**Location:** 7/12/2017-S. APPR.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Calendar:** 8/21/2017 10 a.m. - John L. Burton Hearing Room (4203) SENATE APPROPRIATIONS, LARA, Chair

**Summary:** The California Constitution authorizes the Legislature to prohibit, by statute, investments of a retirement board if it is in the public interest to do so and if the prohibition satisfies the board's standards of fiduciary care and loyalty. This bill would require the boards of administration of the Public Employees' Retirement System and the State Teachers' Retirement System to make a specified report, on or before April 1, 2018, to the Legislature and the Governor regarding investments in the Dakota Access Pipeline, as defined. The bill would declare the intent of the Legislature that the boards, on or before April 1, 2018, review and consider factors related to tribal sovereignty and indigenous tribal rights as part of the boards' investment policies related to environmental, social, and governance issues. The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the constitution. The bill would make additional related legislative findings and declarations. This bill contains other existing laws.

**Position**                      **Priority**    **Subject**  
 Low    Investment/Divestment

**AB 946 (Ting D) State public retirement systems: divestiture: border wall construction companies.**

**Current Text:** Amended: 3/28/2017 [Text](#)

**Last Amend:** 3/28/2017

**Status:** 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was P.E.,R. & S.S. on 3/27/2017)(May be acted upon Jan 2018)

**Location:** 4/28/2017-A. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** The California Constitution provides that the Legislature may, by statute, prohibit retirement board investments if it is in the public interest to do so and providing that the prohibition satisfies specified fiduciary standards. This bill would prohibit the boards of the Public Employees' Retirement System and the State Teachers' Retirement System from making new investments or renewing existing investments of public employee retirement funds in a border wall construction company, as defined. The bill would require the boards to liquidate investments in a border wall construction company within 12 months of the company contracting or subcontracting to provide work or material for a border wall, as defined. The bill would require the boards, in making a determination to liquidate investments, to constructively engage with a border wall construction company to establish whether the company is transitioning its business model away from activities related to a border wall. The bill would provide that it does not require a board to take any action unless the board determines in good faith that the action is consistent with the board's fiduciary responsibilities established in the California Constitution. The bill would make related legislative findings and declarations. This bill would require, on or before January 1, 2019, that these boards file reports with the Legislature and the Governor, containing specified information, including a list of companies of which they have liquidated their investments. The bill would provide that board members and other officers and employees shall be held harmless and be eligible for indemnification in connection with actions taken pursuant to the bill's requirements, as specified. This bill contains other existing laws.

**Position**                      **Priority**    **Subject**  
 Investment/Divestment

**AB 1597 (Nazarian D) Public employee retirement systems: prohibited investments: Turkey.**

**Current Text:** Amended: 6/22/2017 [Text](#)

**Last Amend:** 6/22/2017

**Status:** 7/14/2017-Failed Deadline pursuant to Rule 61(a)(10). (Last location was P.E. & R. on 6/14/2017)(May be acted upon Jan 2018)

**Location:** 7/14/2017-S. 2 YEAR

Desk	Policy	Fiscal	Floor	Desk	<b>2 year</b>	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered	
1st House				2nd House				Conc.				

**Summary:** The California Constitution grants the retirement board of a public employee retirement system plenary authority and fiduciary responsibility for investment of moneys and administration of the retirement fund and system. The California Constitution qualifies this grant of powers by reserving to the Legislature the authority to prohibit investments if it is in the public interest and the prohibition satisfies standards of fiduciary care and loyalty required of a retirement board. Existing law prohibits the boards of administration of the Public Employees' Retirement System and State Teachers' Retirement System from making investments in certain countries and in thermal coal companies, as specified, subject to the boards' plenary authority and fiduciary responsibility for investment of moneys and administration of the systems. This bill would prohibit the boards of administration of the Public Employees' Retirement System and State Teachers' Retirement System from making additional or new investments, or renewing existing investments, of public employee retirement funds in an investment vehicle in Turkey that is issued by the government of Turkey or that is owned, controlled, or managed by the government of Turkey. The bill would require the boards to liquidate existing investments in Turkey in these types of investment vehicles within 6 months of the passage of a federal law imposing sanctions on Turkey. The bill would require these boards, within one year of the passage of a federal law imposing sanctions on Turkey, to make a specified report to the Legislature and the Governor regarding these actions. The bill would provide that its provisions do not require a board to take any action that the board determines in good faith is inconsistent with its constitutional fiduciary responsibilities to the retirement system. The bill would indemnify from the General Fund and hold harmless the present, former, and future board members, officers, and employees of, and investment managers under contract with, the boards, in connection with actions relating to these investments.

**Position**                      **Priority**                      **Subject**  
Investment/Divestment

**[SB 560](#) (Allen D) Public retirement systems: investments: financial climate risk.**

**Current Text:** Amended: 4/17/2017 [Text](#)

**Last Amend:** 4/17/2017

**Status:** 5/26/2017-Failed Deadline pursuant to Rule 61(a)(5). (Last location was APPR. SUSPENSE FILE on 5/25/2017)(May be acted upon Jan 2018)

**Location:** 5/26/2017-S. 2 YEAR

Desk	Policy	<b>2 year</b>	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered	
1st House				2nd House				Conc.				

**Summary:** The California Constitution requires members of the retirement board of a public pension or retirement system to discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. Existing statutory law establishes various public employee retirement systems and provides for the administration of the State Teachers' Retirement System by the Teachers' Retirement Board and for the administration of the Public Employees' Retirement System, among other public employee retirement systems, by the Board of Administration of the Public Employees' Retirement System. This bill would require those boards to consider financial climate risk, as defined, in their management of any funds they administer.

**Position**                      **Priority**                      **Subject**  
Investment/Divestment

**Membership**

**[AB 590](#) (Medina D) Public employees' retirement: membership election.**

**Current Text:** Enrolled: 7/6/2017 [Text](#)

**Status:** 7/12/2017-Enrolled and presented to the Governor at 11:30 a.m.

**Location:** 7/12/2017-A. ENROLLED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	<b>Enrolled</b>	Vetoed	Chaptered	
1st House				2nd House				Conc.				

**Summary:** The Public Employees' Retirement Law permits a member of the Public Employees' Retirement System (PERS) who is employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education to elect to have specified service excluded from coverage by the Defined Benefit Program of the State Teachers' Retirement Plan and



instead be subject to coverage by PERS, as specified. This bill would limit the application of that option to a member of PERS who was employed by a school employer, the Board of Governors of the California Community Colleges, or the State Department of Education within 120 days before the member's date of hire to perform service that requires membership in the Defined Benefit Program of the State Teachers' Retirement Plan.

**Position**                      **Priority**    **Subject**  
 Membership

**Political Reform**

**[AB 1333](#) (Dababneh D) Political Reform Act of 1974: local government agency notices.**

**Current Text:** Amended: 5/18/2017 [Text](#)

**Last Amend:** 5/18/2017

**Status:** 5/26/2017-In committee: Held under submission.

**Location:** 5/26/2017-A. APPR.

Desk	Policy	<b>Fiscal</b>	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** Existing law, whenever an ordinance is required to be submitted to the voters of a county, city, or district at an election, requires the elections official to cause the ordinance to be printed and requires a copy of the ordinance to be made available to any voter upon request. This bill would require every local government agency that maintains an Internet Web site to prominently post on its Internet Web site, as specified, a notice of any upcoming election in which voters will vote on a tax measure or proposed bond issuance of the agency. The bill would also require every local government agency that publishes an electronic newsletter to include the notice in the electronic newsletter. By imposing new duties on local government agencies, the bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws.

**Position**                      **Priority**    **Subject**  
 Political Reform

**Public Records**

**[AB 1455](#) (Bocanegra D) The California Public Records Act: exemptions.**

**Current Text:** Amended: 3/21/2017 [Text](#)

**Last Amend:** 3/21/2017

**Status:** 7/19/2017-From committee: Do pass. (Ayes 5. Noes 2.) (July 18).

**Location:** 7/18/2017-S. JUD.

Desk	Policy	Fiscal	Floor	Desk	<b>Policy</b>	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Calendar:** 7/20/2017 #11 SENATE SEN SECOND READING FILE - ASSEMBLY BILLS

**Summary:** Existing law, the California Public Records Act, requires state and local agencies to make their records available for public inspection, unless an exemption from disclosure applies. Existing law exempts from disclosure specific records of state agencies related to activities governed by the Dills Act, the State Excluded Employees Bill of Rights, and the Higher Education Employer-Employee Relations Act. This bill would also exempt from disclosure specific records of local agencies related to activities governed by the Meyers-Milias-Brown Act. The California Constitution requires local agencies, for the purpose of ensuring public access to the meetings of public bodies and the writings of public officials and agencies, to comply with a statutory enactment that amends or enacts laws relating to public records or open meetings and contains findings demonstrating that the enactment furthers the constitutional requirements relating to this purpose. This bill would make legislative findings to that effect. Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. This bill would make legislative findings to that effect.

**Position**                      **Priority**    **Subject**  
 Public Records

**Retirement Benefits**

**[AB 530](#) (Cooper D) Public employment: collective bargaining: peace officers.**

**Current Text:** Amended: 7/3/2017 [Text](#)

**Last Amend:** 7/3/2017

**Status:** 7/17/2017-In committee: Referred to APPR. suspense file.

**Location:** 7/17/2017-S. APPR. SUSPENSE FILE

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** Existing law establishes the Public Employment Relations Board (PERB) in state government as a means of resolving disputes and enforcing the statutory duties and rights of employers and employees under the Educational Employment Relations Act, the Higher Education Employer-Employee Relations Act, the Ralph C. Dills Act, and the Meyers-Milias-Brown Act. Existing law includes within PERB's jurisdiction resolving disputes alleging violation of rules and regulations adopted by a public agency, as defined, concerning unit determinations, representations, recognition, and elections, as specified. This bill would expand the jurisdiction of PERB to include resolving disputes and statutory duties and rights of persons who are employed by public agencies, as defined, and are peace officers, as defined. The bill also would authorize a peace officer, or a recognized employee organization that represents any person who is a peace officer, as specified, to bring an action in superior court to seek injunctive and other relief pending a final determination by the board, as specified. The bill would except the employee relations commissions of the County of Los Angeles and the City of Los Angeles from the application of its provisions. This bill contains other existing laws.

**Position** **Priority** **Subject**  
Retirement  
Benefits

**[AB 679](#) (Cooley D) Public employees' retirement: investments: security loans.**

**Current Text:** Amended: 6/8/2017 [Text](#)

**Last Amend:** 6/8/2017

**Status:** 7/13/2017-Read third time. Passed. Ordered to the Assembly. In Assembly. Concurrence in Senate amendments pending. May be considered on or after July 15 pursuant to Assembly Rule 77.

**Location:** 7/13/2017-A. CONCURRENCE

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Calendar:** 7/20/2017 #61 ASSEMBLY CONCURRENCE IN SENATE AMENDMENTS

**Summary:** The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS) for the provision of pension benefits to members. PERL grants the Board of Administration of PERS exclusive control of and fiduciary responsibility for the investment of the Public Employees' Retirement Fund, and authorizes the board to enter into specific types of security loan agreements, whereby a legal owner (the lender) agrees to lend specific marketable corporate or government securities for no more than one year, and the lender retains the right to collect from the borrower all dividends, interest, premiums, rights, and other distributions. Existing law grants the board the authority to enter into these agreements pursuant to specific provisions covering security loan agreements by state agencies. This bill would delete the above reference to the security loan provisions for state agencies, thereby providing the board with separate authority to enter into security loan agreements. The bill would require a borrower to provide the board with collateral in the form of cash, United States government debt securities, or other specified forms of collateral, and would require that the amount of the collateral be at least 102% of the market value of the loaned securities or an amount consistent with market practice, whichever is greater. The bill would require the board to revalue the collateral to current market value on each business day or as frequently as industry practices require. The bill would prohibit the total market value of the loaned securities collateralized by marketable public equities and marketable international government bonds from exceeding 25% of the assets of the retirement fund.

**Position** **Priority** **Subject**  
Retirement  
Benefits

**[AB 833](#) (Allen, Travis R) Public employees' retirement.**

**Current Text:** Introduced: 2/16/2017 [Text](#)

**Status:** 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 2/16/2017) (May be acted upon Jan 2018)

**Location:** 5/12/2017-A. 2 YEAR

2 year	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** Existing law, the California Public Employees' Pension Reform Act of 2013, establishes various limits on retirement benefits generally applicable to a public employee retirement system, except as specified, and among other things, prescribes limits on service after retirement without reinstatement into the applicable retirement system. This bill would make a nonsubstantive change to that provision.

**Position**

**Priority**

**Subject**

Retirement  
Benefits

**AB 995**

**(Limón D) County employee retirement: retirement board appointees: leave balances.**

**Current Text:** Chaptered: 7/10/2017 [Text](#)

**Last Amend:** 4/17/2017

**Status:** 7/10/2017-Approved by the Governor. Chaptered by Secretary of State - Chapter 48, Statutes of 2017.

**Location:** 7/10/2017-A. CHAPTERED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** Existing law, the County Employees Retirement Law of 1937, authorizes counties to establish retirement systems, as specified, in order to provide pension benefits to county, city, and district employees. Existing law defines a district for these purposes and includes the retirement system established in Ventura County within the definition. The law authorizes the board of retirement in Ventura County to appoint specified personnel who, subsequent to their appointments, become employees of the retirement system subject to the terms of employment determined by the board of retirement. This bill would require any leave balance accrued by a county employee prior to his or her appointment as a Ventura County retirement system employee, as described above, to be transferred from the county to the retirement system and would require the county to pay to the retirement system an amount equal to the value of the accrued leave, as specified.

**Position**

**Priority**

**Subject**

Retirement  
Benefits

**ACA 15**

**(Brough R) Public employee retirement benefits.**

**Current Text:** Introduced: 5/9/2017 [Text](#)

**Status:** 5/10/2017-From printer. May be heard in committee June 9.

**Location:** 5/9/2017-A. PRINT

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** Existing statutory law establishes various public agency retirement systems, including, among others, the Public Employees' Retirement System, the State Teachers' Retirement System, the Judges' Retirement System II, and various county retirement systems pursuant to the County Employees Retirement Law of 1937, and these systems provide defined pension benefits to public employees based on age, service credit, and amount of final compensation. The California Constitution permits a city or county to adopt a charter for purposes of its governance that supersedes general laws of the state in regard to specified subjects, including compensation of city or county employees. The California Constitution establishes the University of California as a public trust with full powers of organization and government, subject only to specified limitations. Under their respective independent constitutional authority, charter cities and counties and the University of California may and have established retirement systems. The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires the retirement systems to which it applies to modify their provisions to conform with its requirements. PEPRA excepts from its provisions retirement systems established by charter cities and counties and the University of California. PEPRA requires the retirement systems that it regulates and that offer defined benefit plans to provide specified defined benefit formulas and prescribes requirements regarding employer and employee contributions to defined benefit pension plans. This measure would enact the Protecting Schools and Keeping Pension Promises Act of 2018. The measure would prohibit a government employer from enhancing employee pension benefits, as defined, without approval by the voters of the jurisdiction, and would prohibit a government employer from enrolling a new government employee, as defined, in a defined benefit pension plan without approval by the voters of the jurisdiction. The measure also would prohibit a government employer from paying more than 1/2 of the total cost of retirement benefits, as defined, for new government employees without approval by the voters of the jurisdiction. The measure would prohibit retirement boards from imposing charges or other financial conditions on a government employer that proposes to close a defined benefit pension plan to new members unless the voters or the sponsoring government employer approve those charges or conditions. The measure would require challenges to the legality of actions taken by a government employer or a retirement board to comply with its provisions to be brought in state or federal courts. The measure would prohibit its provisions from being interpreted to modify or limit disability benefits provided for government employees or death benefits for families of government employees, even if provided as part of a retirement benefits system, or from requiring voter approval of disability or death benefits. The measure would prescribe various requirements and prohibitions regarding its interpretation and the effect of any other competing measures, among other things.

**Position**

**Priority**

**Subject**

**SB 28**

**(Pan D) State public employment: memoranda of understanding: approval.**

**Current Text:** Chaptered: 3/15/2017 [Text](#)

**Last Amend:** 2/8/2017

**Status:** 3/15/2017-Approved by the Governor. Chaptered by Secretary of State. Chapter 1, Statutes of 2017.

**Location:** 3/15/2017-S. CHAPTERED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** (1)Existing law provides that a provision of a memorandum of understanding reached between the state employer and a recognized employee organization representing state civil service employees that requires the expenditure of funds does not become effective unless approved by the Legislature in the annual Budget Act.This bill would approve provisions requiring the expenditure of funds in the memoranda of understanding entered into between the state employer and State Bargaining Unit 1, Professional, Administrative, Financial, and Staff Services, State Bargaining Unit 3, Professional Educators and Librarians, State Bargaining Unit 4, Office and Allied, State Bargaining Unit 8, Firefighters, State Bargaining Unit 11, Engineering and Scientific Technicians, State Bargaining Unit 12, Craft and Maintenance, State Bargaining Unit 13, Stationary Engineers, State Bargaining Unit 14, Printing and Allied Trades, State Bargaining Unit 15, Allied services, State Bargaining Unit 17, Registered Nurses, State Bargaining Unit 18, Psychiatric Technicians, State Bargaining Unit 19, Health and Social Services/Professional, State Bargaining Unit 20, Medical and Social Services, and State Bargaining Unit 21, Educational Consultant and Library.This bill contains other related provisions and other existing laws.

Position	Priority	Subject
		Retirement Benefits

**SB 32**

**(Moorlach R) California Public Employees’ Pension Reform Act of 2018.**

**Current Text:** Amended: 3/2/2017 [Text](#)

**Last Amend:** 3/2/2017

**Status:** 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was P.E. & R. on 3/8/2017) (May be acted upon Jan 2018)

**Location:** 4/28/2017-S. 2 YEAR

Desk	<b>2 year</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** (1)The Public Employees’ Retirement Law creates the Public Employees’ Retirement System (PERS), and the Teachers’ Retirement Law creates the State Teachers’ Retirement System (STRS), for the provision of service, disability, and other benefits to members. Existing law vests the Teachers’ Retirement Board, which administers STRS, and the Board of Administration of PERS with fiduciary responsibility over the assets of their respective retirement systems and requires the boards to, among other things, employ public accountants who are not in public employment to audit the financial statements of the systems, as specified.This bill would create the Citizens’ Pension Oversight Committee to serve in an advisory role to the Teachers’ Retirement Board and the Board of Administration of PERS. The bill would require the committee, on or before January 1, 2019, and annually thereafter, to review the actual pension costs and obligations of PERS and STRS and report on these costs and obligations to the public and would require reports of audits of STRS and PERS conducted by the public accountants described above to be filed with the committee for this purpose. (2)Under the Public Employees’ Retirement Law, benefits provided by PERS are funded by employer and employee contributions and investment returns. Existing law requires the Board of Administration of PERS to set and adjust employer contribution rates in relation to the system’s actuarial liability and provides for the deposit of employer contributions into the Public Employees’ Retirement Fund, a continuously appropriated fund. Existing law authorizes the board to adopt a funding period of 30 years to amortize unfunded accrued actuarial obligations for current and prior service for the purpose of determining employer contribution rates for contracting agencies and school employers and to adopt an amortization period of 40 years for any unfunded actuarial liability for the benefits applicable to all state miscellaneous members and all state peace officer/firefighter members. This bill would require the board to determine what the level of the unfunded liability of PERS was in 1980 and would further require the board to reduce the unfunded liability of PERS to that level, to be achieved by 2030, with the goal of fully funding PERS. The bill, in any year in which the unfunded actuarial liability of PERS is greater than zero, would require the board to increase the employer contribution rate otherwise provided by law for the state, contracting agencies, and school employers by 10 percent. By increasing deposits into a continuously appropriated fund, the bill would make an appropriation.(3)Existing law prescribes different benefit formulas for members of PERS depending on a member’s classification and date of entry into the system, among other factors.This bill would require the Board of Administration of PERS, on or before January 1, 2019, to develop and submit to the Legislature for approval a hybrid

plan consisting of defined benefit and defined contribution components, as specified, and would require the plan to be applied to members who elect to be subject to the plan or who are first employed by the state, a contracting agency, or a school employer and become members of the system on or after the approval of the plan by the Legislature. The bill would further require the board, on or before January 1, 2019, to review the duties of officers and employees in positions included in the safety member classification pursuant to certain provisions of the Public Employees' Retirement Law and reclassify the positions according to specified criteria. The bill would apply this reclassification to persons who are first employed by the state and become state members of PERS on or after January 1, 2018.(4)The California Public Employees' Pension Reform Act of 2013 (PEPRA), on and after January 1, 2013, requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, provides that the pensionable compensation of a new member of the system is the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members, as specified. PEPRA also requires the final compensation used to determine a retirement benefit to be paid to the new member to be the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months, or at least 3 consecutive school years if applicable, as specified.This bill would prohibit a public retirement board from deeming certain forms of pay to be pensionable compensation and would make related legislative findings and declarations.This bill would enact the California Public Employees' Pension Reform Act of 2018 (PEPRA 2018). The bill, for an individual who becomes a member of any public retirement system, as defined, for the first time on or after January 1, 2018, and who was not a member of any other public retirement system prior to that date, would require the final compensation used to determine the member's retirement benefits to be the highest annual pensionable compensation earned by the member during a period of at least 60 consecutive months, or at least 5 consecutive school years if applicable, as specified. The bill would also provide that if the member leaves the employment of a public employer participating in a public retirement system for other employment, as specified, and is subsequently reemployed by the public employer at least one year later, the member will be subject to the same benefits, contributions, and other terms and conditions applicable to an individual who becomes a member of the public retirement system for the first time on the date of the member's return, for service rendered on or after that date.(5)Existing law provides for the application of cost of living adjustments to allowances paid to persons retired under, or survivors or beneficiaries of members or persons retired under, various public retirement systems.The bill, as part of PEPRA 2018, would prohibit a public retirement system from making a cost of living adjustment to any allowance payable to, or on behalf of, a person retired under the system, or to any survivor or beneficiary of a member or person retired under the system, for any year beginning on or after January 1, 2018, in which PERS or STRS is not fully funded.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
		CalPERS Administration and Duties, Retirement Benefits

**SB 200** (Morrell R) Public employees' retirement benefits: final compensation.

**Current Text:** Introduced: 1/31/2017 [Text](#)

**Status:** 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was RLS. on 1/31/2017) (May be acted upon Jan 2018)

**Location:** 5/12/2017-S. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** The California Public Employees' Pension Reform Act of 2013 (PEPRA), on and after January 1, 2013, requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes certain new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan.This bill would make a nonsubstantive change to that provision. This bill contains other existing laws.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
		Retirement Benefits

**SB 525** (Pan D) Public employees' retirement.

**Current Text:** Introduced: 2/16/2017 [Text](#)

**Status:** 7/19/2017-From committee: Do pass. Ordered to consent calendar. (Ayes 16. Noes 0.) (July 19).

**Location:** 7/19/2017-A. SECOND READING

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Calendar:** 7/20/2017 #41 ASSEMBLY SECOND READING FILE -- SENATE BILLS

**Summary:** (1)The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement

System (PERS), which provides defined benefits to its members based on age at retirement, service credit, and final compensation. PERL vests the Board of Administration of PERS with management and control of the system. This bill would redefine those terms to specify that the duration of the disability or incapacity must be expected to last at least 12 consecutive months or result in death. The bill also would revise and recast the definition of final compensation for local members. This bill contains other related provisions and other existing laws.

**Position**                      **Priority**    **Subject**  
 Retirement  
 Benefits

**[SB 571](#) (Pan D) Public employee retirement plans: automatic enrollment and escalation.**

**Current Text:** Introduced: 2/17/2017 [Text](#)

**Status:** 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was P.E. & R. on 3/2/2017) (May be acted upon Jan 2018)

**Location:** 4/28/2017-S. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

**Summary:** Existing federal law prescribes requirements for different types of tax-qualified retirement plans that permit employees to contribute portions of their pretax wages to individual retirement accounts or that provide for deferred compensation. Existing law authorizes the Department of Human Resources to establish and administer tax-deferred savings plans in accordance with specified provisions of federal law. This bill would authorize a state or local public employer participating in an employee supplemental retirement savings plan, defined to include specified deferred compensation plans and payroll deduction individual retirement account plans, to make a deduction from the wages or compensation of an employee for contributions attributable to automatic enrollment and automatic escalation in the employee retirement plan. The bill would require an employer that provides for automatic enrollment in a supplemental retirement savings plan to provide a default investment option and default investment plan that meets a variety of specified criteria, including providing employees an opportunity to opt out or withdraw. The bill would provide that an employer that provides automatic enrollment or automatic escalation in an employee retirement plan subject to these provisions is not liable for the investment decisions made by the employer on behalf of any participating employee with respect to the default investment of contributions made for that employee to the plan. The bill would prohibit an employer from making deductions from the compensation of represented employees in the absence of a collectively bargained memorandum of understanding or other collective bargaining agreement authorizing those deductions. This bill contains other related provisions.

**Position**                      **Priority**    **Subject**  
 Retirement  
 Benefits

**[SB 656](#) (Moorlach R) Judges' Retirement System II: deferred retirement.**

**Current Text:** Introduced: 2/17/2017 [Text](#)

**Status:** 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was P.E. & R. on 3/9/2017) (May be acted upon Jan 2018)

**Location:** 4/28/2017-S. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf.	Enrolled	Vetoed	Chaptered
1st House				2nd House				Conc.			

**Summary:** (1) Existing law establishes the Judges' Retirement System II, which the Board of Retirement of the Public Employees' Retirement System administers. Existing law authorizes a judge who is a member of the system who retires upon attaining both 65 years of age and 20 or more years of service, or upon attaining 70 years of age with a minimum of 5 years of service, to elect from specified retirement benefits including a monthly pension. Existing law requires a judge who leaves judicial office after accruing 5 or more years of service, but who has not reached the applicable age of retirement, to be paid a lump sum equal to monetary credits that accrued while he or she was in office, as specified. Existing law authorizes a judge who, among other things, separates from office after accruing 5 or more years of service and has not reached 65 years of age to continue health care benefits if he or she assumes certain payments. This bill would authorize a judge with at least 5 or more years of service to retire and to elect to receive a monthly pension that would be deferred until the judge reaches retirement age, as specified. The bill would prohibit a judge who elects to retire in this manner from receiving benefits until he or she reaches the applicable retirement age and would prescribe procedures to apply if the judge fails to elect within 30 days of separation. The bill would authorize the board to charge an administrative fee, as specified, to a judge who elects to apply these provisions. This bill contains other related provisions and other existing laws.

**Position**                      **Priority**    **Subject**  
 Retirement  
 Benefits

**[SB 671](#) (Moorlach R) County employees' retirement: retirement funds: transfers.**

**Current Text:** Chaptered: 7/17/2017 [Text](#)

**Last Amend:** 5/4/2017

**Status:** 7/17/2017-Approved by the Governor. Chaptered by Secretary of State. Chapter 76, Statutes of 2017.

**Location:** 7/17/2017-S. CHAPTERED

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to county and district employees. CERL requires a county auditor to certify to the retirement board, at the end of each month or pay period, the compensation earnable paid to members of the retirement association and to transfer the applicable percentage of the county's annual contribution to the retirement fund, as specified. CERL authorizes the board of supervisors to authorize the county auditor to make an advance payment of all or part of the county's estimated annual contribution if the payment is made within 30 days after the county's fiscal year begins. Existing law also authorizes a district that is a member of the retirement system in the County of San Bernardino to make advance payments, as described above. This bill would specify that the authority to make advance payments, described above, does not prevent the board of supervisors or governing body of a district from making advance payments for the estimated annual county or district contributions for an additional year or partial year if certain requirements are satisfied. The bill would revise the provisions currently applicable to a district that is a member of the retirement system in the County of San Bernardino to make them applicable to districts that are members of county retirement systems generally. The bill would make a variety of technical and conforming changes.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
		CERL, Retirement Benefits

**[SB 681](#) (Moorlach R) Public employees' retirement: contracting agencies: termination.**

**Current Text:** Amended: 4/17/2017 [Text](#)

**Last Amend:** 4/17/2017

**Status:** 4/28/2017-Failed Deadline pursuant to Rule 61(a)(2). (Last location was P.E. & R. on 4/19/2017)(May be acted upon Jan 2018)

**Location:** 4/28/2017-S. 2 YEAR

Desk	2 year	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** The Public Employees' Retirement Law creates the Public Employees' Retirement System (PERS), which provides a defined benefit to its members based on age at retirement, service credit, and final compensation. That law authorizes any public agency to make its employees members of PERS by contracting with the Board of Administration of PERS. Existing law provides for the termination of a contract, including requiring the board to enter, upon request, into a prescribed agreement with the terminating agency relating to the calculation of final compensation for employees and related necessary adjustments in the employer's contribution. This bill would require the Board of Administration of PERS to allow a contracting agency to terminate its contract with the system in a manner that does not result in excessive costs or penalties to the contracting agency, allows the contracting agency to withdraw its net assets paid into the system less payments made to its members and their beneficiaries, and ensures that the contracting agency remains responsible for its unfunded liabilities so that those liabilities are not shifted onto other PERS members or employers. Before a contracting agency would be eligible to terminate its contract, the bill would require a contract to have been in effect for at least 5 years and meet other notice and approval requirements. The bill also would require the agreement between the contracting agency and the board to contain provisions to protect the interests of the system, and would require a contracting agency, before terminating its contract, to determine how termination would affect the health care benefits of its members and also to determine the federal tax ramifications associated with its decision. The bill would contain related legislative findings.

<b>Position</b>	<b>Priority</b>	<b>Subject</b>
		Retirement Benefits

**[SCA 8](#) (Moorlach R) Public employee retirement benefits.**

**Current Text:** Introduced: 2/15/2017 [Text](#)

**Status:** 6/20/2017-June 26 set for first hearing canceled at the request of author.

**Location:** 2/23/2017-S. P.E. & R.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** Existing statutory law establishes various public agency retirement systems, including,

among others, the Public Employees' Retirement System, the State Teachers' Retirement System, the Judges' Retirement System II, and various county retirement systems pursuant to the County Employees Retirement Law of 1937, and these systems provide defined pension benefits to public employees based on age, service credit, and amount of final compensation. The California Constitution permits a city or county to adopt a charter for purposes of its governance that supersedes general laws of the state in regard to specified subjects, including compensation of city or county employees. The California Constitution establishes the University of California as a public trust with full powers of organization and government, subject only to specified limitations. Under their respective independent constitutional authority, charter cities and counties and the University of California may and have established retirement systems. The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires the retirement systems to which it applies to modify their provisions to conform with its requirements. PEPRA excepts from its provisions retirement systems established by charter cities and counties and the University of California. PEPRA requires the retirement systems that it regulates and that offer defined benefit plans to provide specified defined benefit formulas and prescribes requirements regarding employer and employee contributions to defined benefit pension plans. This measure would permit a government employer to reduce retirement benefits that are based on work not yet performed by an employee regardless of the date that the employee was first hired, notwithstanding other provisions of the California Constitution or any other law. The measure would prohibit it from being interpreted to permit the reduction of retirement benefits that a public employee has earned based on work that has been performed, as specified. The measure would define government employer and retirement benefits for the purposes of its provisions.

**Position**                      **Priority**                                      **Subject**  
 Retirement  
 Benefits

**SCA 10**      **(Moorlach R) Public employee retirement benefits.**

**Current Text:** Introduced: 2/17/2017 [Text](#)

**Status:** 6/20/2017-June 26 set for first hearing canceled at the request of author.

**Location:** 3/2/2017-S. P.E. & R.

Desk	<b>Policy</b>	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered
1st House				2nd House							

**Summary:** Existing statutory law establishes various public agency retirement systems, including, among others, the Public Employees' Retirement System, the State Teachers' Retirement System, the Judges' Retirement System II, and various county retirement systems pursuant to the County Employees Retirement Law of 1937, and these systems provide defined pension benefits to public employees based on age, service credit, and amount of final compensation. The California Constitution permits a city or county to adopt a charter for purposes of its governance that supersedes general laws of the state in regard to specified subjects, including compensation of city or county employees. The California Constitution establishes the University of California as a public trust with full powers of organization and government, subject only to specified limitations. Under their respective independent constitutional authority, charter cities and counties and the University of California may and have established retirement systems. The California Public Employees' Pension Reform Act of 2013 (PEPRA) generally requires the retirement systems to which it applies to modify their provisions to conform with its requirements. PEPRA excepts from its provisions the retirement systems established by charter cities and counties and the University of California. PEPRA requires the retirement systems that it regulates and that offer defined benefit plans to provide specified defined benefit formulas, and prescribes requirements regarding employer and employee contributions to defined benefit pension plans. This measure would prohibit a government employer from providing public employees any retirement benefit increase until that increase is approved by a 2/3 vote of the electorate of the applicable jurisdiction and that vote is certified. The measure would define retirement benefit to mean any postemployment benefit and would define benefit increase as any change that increases the value of an employee's retirement benefit. The measure would define a government employer to include, among others, the state and any of its subdivisions, cities, counties, school districts, special districts, the Regents of the University of California, and the California State University.

**Position**                      **Priority**                                      **Subject**  
 Retirement  
 Benefits

**State Contribution**

**AB 100**      **(Committee on Budget) Public Employees' Retirement Fund: state employer contributions: supplemental payment.**

**Current Text:** Amended: 6/13/2017 [Text](#)

**Last Amend:** 6/13/2017

**Status:** 6/20/2017-In committee: Hearing for testimony only.



**Location:** 6/13/2017-S. BUDGET & F.R.

Desk	Policy	Fiscal	Floor	Desk	Policy	Fiscal	Floor	Conf. Conc.	Enrolled	Vetoed	Chaptered	
1st House				2nd House								

**Summary:** (1)The Public Employees' Retirement Law (PERL) creates the Public Employees' Retirement System (PERS) for the purpose of providing pension and benefits to state employees and employees of contracting agencies and prescribes the rights and duties of employers participating in the system. Under PERL, benefits are funded by employer and employee contributions and investment income, which are deposited into the Public Employees' Retirement Fund, a continuously appropriated trust fund administered exclusively by the system's board of administration. PERL prescribes methods for the calculation and payment of the state employer contribution for its employees who are PERS members. PERL provides for an annual adjustment of the state's contribution in the budget and quarterly appropriations to the Public Employees Retirement Fund from the General Fund and other funds that are responsible for payment of the employer contribution. Existing law requires the Pooled Money Investment Board to determine whether money on deposit in the State Treasury, exclusive of the General Fund and other specified funds, is not necessary for immediate use and, if so, to determine the amount which is then designated as surplus money. Existing law creates the Surplus Money Investment Fund and requires the Controller to transfer surplus money to it, provided that moneys from a special fund is not to be transferred if that will interfere with carrying out the purposes that the special fund supports. Existing law requires that moneys in the Surplus Money Investment Fund be invested by the Treasurer as part of the Pooled Money Investment Account. Moneys in the Surplus Money Investment Fund are continuously appropriated. This bill would require the Controller, by a specified deadline, to transfer up to \$6,000,000,000 from the Surplus Money Investment Fund and other funds in the Pooled Money Investment Account that accrue interest to the General Fund as a cash loan, the proceeds of which would supplement the state's employer contributions for the 2017-18 fiscal year. The bill would prescribe how the payment is to be applied with respect to specified employee categories. The bill would require the Department of Finance to provide the Controller a schedule of the timing and amounts to be transferred to the Public Employees' Retirement Fund. By providing that money in a continuously appropriated fund may be used for a new purpose, and by depositing new moneys into a continuously appropriated fund, this bill would make an appropriation. The bill would require that repayment of the loan principal and the payment of interest be made from the General Fund and other funds and accounts that are required by law to fund the state's employer contribution to the Public Employees' Retirement Fund and would continuously appropriate funds for this purpose. The bill would require the Department of Finance to devise a tracking mechanism and maintain records of payment by each fund, as specified, and develop a repayment schedule that allocates the amount to each fund after evaluation of its share of costs and its fund availability. The bill also would require the department to ensure each fund pays its proportionate share of the loan principal and interest. The bill would identify the repayment of principal and payment of interest as an obligation pursuant to specified constitutional provisions. The bill would require the Department of Finance to certify to the Controller, and include in the published fund condition statement of the applicable funds and accounts, the amount determined to be the share of the loan principal and interest due and payable from each fund for the fiscal year and would require the timing and amounts of transfers to be pursuant to calculations provided by the Department of Finance. The bill would calculate interest on outstanding amounts of the loan based on the 2-year constant maturity United States Treasury rate, as specified. The bill would require interest payments to be made quarterly and that the principal and interest be fully repaid by June 30, 2030. The bill would provide that interest payments are Pooled Money Investment Account interest earnings to be apportioned as directed in provisions related to that account, unless modified by a specified agreement, and would make conforming changes in this regard. The bill would require the Controller, upon notification of the Department of Finance, to transfer the amount of the loan principal repayment or interest payment, as applicable, from all funds to the Surplus Money Investment Fund or to the General Fund if repayment or payments are made in advance from the General Fund. If a fund has an insufficient fund balance for the repayment of loan principal or payment of interest, the bill would require the Controller to request the Department of Finance for direction in this regard. The bill would prohibit the implementation of these provisions from obstructing any of the trust purposes of the programs supported by funds on deposit in the Surplus Money Investment Fund and other funds in the Pooled Money Investment Account that accrue interest to the General Fund. The bill would require the Department of Finance, within one month after each calendar quarter is concluded, to submit a report to the Joint Legislative Budget Committee identifying funds or accounts with an insufficient fund balance and the direction provided to the Controller on these funds. This bill contains other related provisions.

**Position**

**Priority**  
High

**Subject**  
State  
Contribution

[AB 825](#)

**(Choi R) State employees' retirement.**

**Current Text:** Introduced: 2/16/2017 [Text](#)

**Status:** 5/12/2017-Failed Deadline pursuant to Rule 61(a)(3). (Last location was PRINT on 2/16/2017) (May be acted upon Jan 2018)

**Location:** 5/12/2017-A. 2 YEAR



October 12, 2017

TO: Each Member  
Board of Retirement

FROM: Insurance, Benefits and Legislative Committee  
William de la Garza, Chair  
Vivian H. Gray, Vice Chair  
Ronald Okum  
Alan Bernstein  
David Muir, Alternate

FOR: November 9, 2017 Board of Retirement Meeting

SUBJECT: **PROVIDE VOTING DIRECTIONS ON SACRS 2018 LEGISLATIVE PLATFORM**

## **RECOMMENDATION**

That the Board of Retirement provide the following directions to its voting delegate with respect to the 2018 legislative platform of the State Association of County Retirement Systems (SACRS):

- I. Vote NO on SACRS sponsorship of “Providing Definition of ‘Surviving Spouse’ for Eligibility for Survivor Continuances” as proposed by the Ventura County Employees’ Retirement Association (VCERA).
- II. Vote NO on SACRS sponsorship of “Time Limits of Filing Application for Disability Retirement” as proposed by the Ventura County Employees’ Retirement Association (VCERA).
- III. Vote NO on SACRS sponsorship of “Trustee Authority over Retirement Office Executive Staff” as proposed by the Tulare County Employees Retirement Association (TCERA).

## **DISCUSSION**

Each year, the 20 retirement systems operating under the County Employees Retirement Law of 1937 (CERL) are asked to submit proposals to the Legislative Committee of the State Association of County Retirement Systems (SACRS) for sponsorship in the SACRS legislative platform. The items submitted should have application to all CERL systems rather than an individual system; they should not propose new benefits that will be paid for by the plan sponsor; and they should not create major issues, such as conflicts with Proposition 162 or with any of the 19 other CERL retirement systems.

Three proposals were submitted to the SACRS Legislative Committee for inclusion in the SACRS 2018 legislative platform. The SACRS Legislative Committee discussed the proposals at its meeting of September 22, 2017 and voted to recommend whether SACRS should sponsor or decline to sponsor the proposals. The recommendations by the SACRS Legislative Committee are listed under each proposal below and are advisory recommendations. Regardless of the SACRS Legislative Committee's recommendation, each proposal will be presented to the full SACRS membership for a vote by each system's voting delegate at the SACRS Business Meeting on November 17, 2017 at the SACRS 2017 Fall Conference.

**I. Providing Definition of "Surviving Spouse" for Eligibility for Survivor Continuances (VCERA)**

- *IBLC Recommendation: **Vote NO.***
- *Staff Recommendation: **Vote NO.***
- *SACRS Legislative Committee Recommendation: **Sponsor.***

CERL currently provides for survivor benefits to be paid upon the death of a member who retired for service or disability. Survivor benefits are a continuance of a percentage of the member's retirement allowance. Generally, a surviving spouse must be married either prior to or at least one year prior to the date of the member's retirement. An alternative eligibility requirement for surviving spouses (which LACERA never adopted) is that the survivor must be at least 55 years of age and married to the member at least two years before the member's death. Regardless of which provision for survivor benefits is applicable with respect to the date of marriage, the issue in VCERA's proposal is regarding the definition of "surviving spouse."

A former spouse is not considered a surviving spouse after a dissolution of marriage. However, CERL does not define whether a legally separated spouse is considered a surviving spouse. According to VCERA's proposal, the treatment of legally separated spouses as surviving spouses is inconsistent among the retirement systems operating under CERL. For example, LACERA (among six CERL retirement systems cited in the proposal) treats a legally separated spouse as a surviving spouse. However, the proposal states that at least eight CERL retirement systems do not consider legally separated spouses as surviving spouses. Specifically, the Contra Costa County Employees' Retirement Association (CCCERA) is one of those systems and was involved in a case that found that the term "surviving spouse" in CERL should include a legally separated person (*Irvin v. Contra Costa County Employees' Retirement Assn.* (2017) 13 Cal.App.5<sup>th</sup> 162 [200 Cal.Rptr.3d 510]), contrary to CCCERA's existing practice of not treating legally separated spouses as surviving spouses.

LACERA currently treats a legally separated spouse as a surviving spouse for purposes of paying survivor benefits, which is consistent with the Court of Appeal's decision in *Irvin*. Given the fact that the treatment of legally separated spouses as surviving spouses is inconsistent among the CERL retirement systems, a uniform definition of surviving spouse that results in consistent treatment is desirable in concept. However, the court in *Irvin* found that CCCERA failed to articulate a substantial public policy reason as to why the definition of surviving spouse should exclude legally separated spouses and thereby deny continuance benefits to them. Similarly, VCERA's proposal does not articulate a substantial public policy reason why the definition of surviving spouse should exclude legally separated spouses as opposed to including them within the definition.

CCCERA based its determination of surviving spouse status on Section 78 of the Probate Code, which does not include spouses who are subject to a judgment of legal separation within the definition of surviving spouse. The court in *Irvin* found that this was a general definition within the Probate Code and that there were various provisions within the Probate Code that treat legally separated spouses as surviving spouses as well as other provisions that do not treat them as surviving spouses. The court concluded that the Probate Code did not provide useful guidance in interpreting the definition of surviving spouse in the CERL section that authorizes CCCERA to provide survivor benefits.

VCERA proposes to define "surviving spouse" within CERL under a new Section 31480.1. The proposed definition of "surviving spouse" is based on Section 101(3) of Title 38 of the United States Code, which governs veterans' benefits. The *Irvin* court's assessment of the Probate Code indicates that the Probate Code is not the ideal framework for defining the treatment of legally separated spouses as surviving spouses. However, it is unclear why the law governing veterans' benefits would be a better framework for the definition of surviving spouse. Arguably, the law governing Social Security benefits, rather than veteran's benefits, is more conceptually harmonious with pension benefits, given the fact that certain sections of CERL provide for integration of pension benefits with Social Security benefits. Section 416(a)(2) of Title 42 of the United States Code defines "surviving spouse" for purposes of Social Security benefits as a widow or widower, and the status of a widow or widower is determined based on whether such a person was validly married to an individual before he or she was deceased. Moreover, Section 416(d) defines other terms such as "surviving divorced wife" and "surviving divorced husband." These terms suggest that with regard to a spousal relationship one is either married or divorced and that legal separation does not play any role in determining whether a person is a surviving spouse for Social Security purposes. Whether probate, veterans' benefits, Social Security benefits, or some other structure should be the proper framework for determining the treatment of legally separated spouses as surviving spouses appears to be a public policy issue for discussion by stakeholders as to who should be entitled to survivor benefits rather than

an administrative issue. Absent this discussion, the court in *Irvin* found that the plain meaning of “surviving spouse” currently in CERL includes legally separated spouses.

In addition to the lack of a public policy reason in the proposal for excluding legally separated spouses as surviving spouses and the lack of clarity in using the framework of veterans’ benefits to determine survivor benefits under CERL, it may be premature at this point to propose new legislation to define a surviving spouse. The *Irvin* case is the subject of a pending petition for review before the California Supreme Court; it is not yet known whether the Court will accept review. The Court has stated that it will decide whether to grant or deny review on or before November 7, 2017. It would be prudent to wait for a final determination by the Court before considering whether new legislation is necessary.<sup>1</sup>

(The SACRS Legislative Committee’s discussion of this proposal noted that two elements within the proposed Section 31480.1 were administratively problematic and suggested that they be removed if the proposal should become a bill. The two elements are 1) that the surviving spouse has lived with the member from the date of marriage to the date of the member’s death and 2) that the surviving spouse has not remarried or lived with another person and held himself or herself out publicly as the spouse of that person.)

## **II. Time Limits of Filing Application for Disability Retirement (VCERA)**

- *IBLC Recommendation: **Vote NO.***
- *Staff Recommendation: **Vote NO.***
- *SACRS Legislative Committee Recommendation: **Decline to Sponsor.***

VCERA proposes to amend Section 31722 of the Government Code, which provides for the timing of when an application for disability retirement can be made by a member. VCERA observes that in a recent disability case involving the San Bernardino County Employees’ Retirement Association, the member waited 8 years after discontinuance of service before filing an application for disability retirement. VCERA believes that a long period between the discontinuance of service and the filing of an application makes it more difficult to investigate the application. VCERA proposes that during the period between the discontinuance of service and the filing of the application that the

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<sup>1</sup> At the time this memorandum was submitted for the Insurance, Benefits and Legislative Committee’s agenda, the Supreme Court had not yet made a decision on whether to accept review of the *Irvin* case. On October 11, 2017, the day before the Committee considered staff’s recommendation on voting directions, the Supreme Court denied the petition for review. Thus, waiting for the Supreme Court’s determination is no longer a factor in considering whether new legislation is necessary. The decision by the Court of Appeal in *Irvin* affirms that the definition of “surviving spouse” in CERL includes legally separated spouses.

application be filed within four months of when the member is or should be able to ascertain the permanency of the incapacity.

The proposal is problematic in that it attempts to solve an operational issue (i.e., difficulty in investigating a disability application) with a policy change that limits the due process rights of a member in being able to file a disability application. Section 31722 only deals with the filing of a disability application, and disability retirements are not granted under this section. Whether a member is permanently incapacitated and entitled to a disability retirement is governed by Section 31720. Absent any presumptions regarding permanent incapacity that may apply, a member has the burden of proving permanent incapacity through the process of filing an application that is investigated by the retirement system and having an administrative hearing.

The goal of VCERA's proposal is to limit the number of "difficult" applications that arise and must be investigated. However, the proposal's requirement that a member must file a disability application within four months of when he or she is or should be able to ascertain the permanency of the incapacity would not avoid the need for a disability application to be investigated and an administrative hearing to determine whether a disability application was filed in a timely manner. Determining when a member is or should be able to ascertain the permanency of his or her incapacity is a question of facts and circumstances. The disability application would still have to be investigated, and a decision would have to be rendered through an administrative hearing. Limiting a member's due process rights in the application process would not solve this issue.

### **III. Trustee Authority over Retirement Office Executive Staff (TCERA)**

- *IBLC Recommendation: **Vote NO.***
- *Staff Recommendation: **Vote NO.***
- *SACRS Legislative Committee Recommendation: **Decline to Sponsor.***

Government Code Section 31522.3 currently provides authority to a board of retirement (or to both the board of retirement and board of investments) to appoint assistant administrators and chief investment officers. These positions are not subject to county charter, civil service, or merit system rules; however, the persons appointed to the positions are considered county employees. The appointed assistant administrators and chief investment officers serve at the pleasure of, and may be dismissed at the will of, the board or boards. These requirements do not apply to any assistant administrators or chief investment officers who were included in county civil service or subject to merit system rules prior to December 31, 1996. Section 31522.3 currently applies to the Counties of San Diego, Sacramento, Kern, San Joaquin, and Marin. The County of Tulare is currently not subject to Section 31522.3. TCERA proposes that Section

31522.3 instead be applicable to all counties with retirement systems operating under CERL.

Staff believes that this proposal should not apply to all counties with retirement systems operating under CERL without the option of local adoption. The evolution of Section 31522.3 suggests that as a particular CERL retirement system needed to appoint assistant administrators and chief investment officers on an “at pleasure” basis, Section 31522.3 was made applicable to that system. Given the diversity of the 20 retirement systems operating under CERL in terms of organizational size, structure, and personnel management strategies, the “one-size-fits-all” solution that TCERA is proposing is not ideal since each system should have flexibility in determining which management positions are and are not subject to civil service or merit system rules.

For example, in 2001, LACERA sponsored legislation that applies to LACERA only to enable the Board of Retirement or both the Board of Retirement and Board of Investments to appoint on an “at pleasure” basis assistant administrators, persons next in line of authority to assistant administrators, chief legal officers, chief deputy legal officers, chief investment officers, and investment officers next in line of authority to chief investment officers. Another approach used by some CERL retirement systems is to become a district in order to directly employ some or all of their employees, so that they are employees of the retirement system and subject to the terms and conditions of employment established by a board of retirement rather than by a board of supervisors. In the case of AB 1853 (2016, vetoed), which provided authority for any CERL retirement system to become a district, each retirement system had the option of electing to become a district.

If an individual CERL retirement system desires to appoint an assistant administrator or chief investment officer under the terms and conditions of Section 31522.3, a path exists for that system to sponsor legislation that would make Section 31522.3 applicable to itself rather than to all CERL retirement systems. Moreover, if Section 31522.3 were to apply to all CERL retirement systems without the option of local adoption, it would be a stricter provision in terms of applicability than Section 31522.2, which applies to the appointment of a CERL system’s retirement administrator but is subject to local adoption.

**IT IS THEREFORE RECOMMENDED THAT YOUR BOARD** provide the following directions to its voting delegate with respect to the 2018 legislative platform of the State Association of County Retirement Systems (SACRS):

- I. Vote NO on SACRS sponsorship of “Providing Definition of ‘Surviving Spouse’ for Eligibility for Survivor Continuances” as proposed by the Ventura County Employees’ Retirement Association (VCERA).



- II. Vote NO on SACRS sponsorship of “Time Limits of Filing Application for Disability Retirement” as proposed by the Ventura County Employees’ Retirement Association (VCERA).
- III. Vote NO on SACRS sponsorship of “Trustee Authority over Retirement Office Executive Staff” as proposed by the Tulare County Employees Retirement Association (TCERA).

### **Attachments**

Attachment 1—Providing Definition of “Surviving Spouse” for Eligibility for Survivor Continuances

Attachment 2—Time Limits for Filing Application for Disability Retirement

Attachment 3—Trustee Authority over Retirement Office Executive Staff

cc: Robert Hill  
James Brekk  
JJ Popowich  
Bernie Buenaflor  
Steven Rice  
Vincent Lim  
Ricki Contreras  
Frank Boyd  
Fern Billingsy  
Jill Rawal  
Allison Barrett  
Eugenia Der  
Jason Waller  
Joe Ackler, Ackler & Associates

**2018 SACRS LEGISLATIVE PLATFORM WORKSHEET  
PLEASE COMPLETE AND RETURN BY SEPTEMBER 5, 2017**

Title of Issue: Providing definition of “Surviving Spouse” for eligibility for survivor continuances.

Association: Ventura County Employees’ Retirement Association

Contact Person: Linda Webb, Retirement Administrator

Phone #: (805) 339-4262

Fax #: (805) 339-2502

Please answer the following questions as fully as possible:

1. Description of issue.

Under the CERL, a member may elect among various payment options at time of retirement. An unmodified allowance pays the highest monthly benefit and a 60% continuance to an eligible surviving spouse or, if none, to a minor child or children. (Govt. Code §§ 31760.1, 31760.2.) The survivor continuance is 100% in cases where the member is retired for service-connected disability. (Govt. Code § 31787.) Under the unmodified allowance, Government Code section 31760.1 provides for a continuance to a surviving spouse who was married to the member for at least one year prior to retirement, and Government Code section 31760.2, an optional provision made applicable by board resolution, allows for a survivor continuance to be paid to a post-retirement spouse, provided the spouse is at least 55 years of age and was married to the member for at least two years prior to the member’s death.

The term “surviving spouse” is not defined by the CERL. Case law is clear that following a judgment of dissolution of marriage, a former spouse is not a “surviving spouse” under CERL, though the former spouse may be awarded his/her community property share of the member’s benefits and also may continue to receive his/her community property share of any survivor continuance paid to the member’s survivor(s). (See *In Re Marriage of Carnall* (1989) 216 Cal.App.3d 1010; *In Re Marriage of Cramer* (1993) 20 Cal.App.4th 73.) However, published case law did not address the rights of legally-separated spouses prior to the recent issuance of the opinion in *Irvin v. Contra Costa County Employees’ Retirement Association*, First Appellate District, Div. 1, A149642 (the “Opinion”). The Opinion concludes that a legally separated spouse qualifies for a survivor continuance as the member’s “surviving spouse”. This Opinion is contrary to the practices of at least eight CERL systems and three prior decisions issued by the superior court in Santa Barbara, Contra Costa and Ventura counties. CCCERA has filed a petition for Supreme Court review, and four systems, so far, have jointly submitted a letter in support of review. (Ventura, Santa Barbara, San Bernardino and Tulare). The Opinion also impacts account divisions under Article 8.4 of the CERL. Prior to the Opinion, none of the systems that operate under Article 8.4 treat a legally separated spouse as the member’s surviving spouse, primarily because a survivor continuance is not among the benefits payable to the nonmember and any benefits not awarded to the spouse are the sole and separate property of the member’s.

1. Recommended solution.

Add a provision to CERL to define “Surviving Spouse” so as to include only a spouse who is legally married to the member, is neither divorced nor legally separated from the member, has lived with the member continuously from the date of marriage to the date of the member’s death and who meets all other requirements of CERL pertain to the length of the marriage and the spouse’s age at the time of the member’s death. (A similar provision appears in 38 U.S.C. section 101(3), governing a surviving spouse’s rights to veteran’s benefits.<sup>1</sup>)

2. Specific language that you would like changed in, or added to, ’37 Act Law, and suggested code section numbers.

Section 31480.1 is added to the Government Code to read:

31480.1. “Surviving spouse”, as used in this Chapter, means a person who has legally married the member, is neither divorced nor legally separated from the member, is the spouse of the member at the time of the member’s death, has lived with the member from the date of marriage to the date of the member’s death, has not remarried or lived with another person and held himself or herself out publicly as the spouse of that person, and who meets all other requirements of this Chapter pertaining to the length of the marriage, and the person’s age at the time of the member’s death.

2. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

This issue affects all CERL systems.

3. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

According to informal survey responses, there are currently approximately eight CERL systems whose practices are consistent with the proposed legislation. There are approximately six CERL systems that currently treat legally separated spouses as “surviving spouses” eligible for survivor continuances, and it is unknown whether these systems would oppose the proposed legislation.

4. Who will support or oppose this proposed change in the law?

Counties may support this proposed change, as it would result in cost savings to plan sponsors. Under the CERL’s funding mechanism, the survivor continuance is not included in the normal cost. The normal cost is based on the age of the member alone. The plan sponsors absorb any

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<sup>1</sup> 38 USC 101(3) provides: “The term ‘surviving spouse’ means (except for purposes of chapter 19 of this title) a person of the opposite sex who was the spouse of a veteran at the time of the veteran’s death, and who lived with the veteran continuously from the date of marriage to the date of the veteran’s death (except where there was a separation which was due to the misconduct of, or procured by, the veteran without the fault of the spouse) and who has not remarried or (in cases not involving remarriage) has not since the death of the veteran, and after September 19, 1962, lived with another person and held himself or herself out openly to the public to be the spouse of such other person.” Note that subsequent to the Defense of Marriage Act, this statute may not be used to deny benefits to same sex spouses who otherwise meet the statutory criteria for “surviving spouse.” See *Cooper-Harris v. United States of America* (2013) 965 F.Supp.2d 1139.

additional costs of providing a survivor continuance under the unmodified option. In opposition to the proposed change may be the family law and QDRO attorneys.

5. Who will be available from your association to testify before the Legislature?

Retirement Administrator, Linda Webb, and General Counsel, Lori Nemiroff.

Email or mail your legislative proposals to:

Mike Robson and Trent Smith  
Edelstein, Gilbert, Robson, & Smith LLC  
1127 11<sup>th</sup> Street, Suite 1030  
Sacramento, CA 95814

Email to both:

[Mike@EGRSlobby.com](mailto:Mike@EGRSlobby.com)

[Trent@EGRSlobby.com](mailto:Trent@EGRSlobby.com)

**2018 SACRS LEGISLATIVE PLATFORM WORKSHEET  
PLEASE COMPLETE AND RETURN BY SEPTEMBER 5, 2017**

Title of Issue: Time Limits for Filing Application for Disability Retirement

Association: VCERA

Contact Person: Linda Webb

Phone #: (805) 339-4262

Fax #: (805) 339-2502

Please answer the following questions as fully as possible:

1. Description of issue.

Under GC 31722, an application for disability retirement must generally be filed within four months after discontinuance of service (unless a presumption applies), but may be filed at *any time* after discontinuance of service provided that from the date of discontinuance of service to the time of the application, the member is continuously incapacitated. As observed in the recent case of *Flethez v. San Bernardino County Retirement System* (2017) 2 Cal.5<sup>th</sup> 630, a member waited 8 years after discontinuance of service to file his application for disability retirement. A long period of delay between discontinuance of service and date of filing makes it more difficult to investigate the application.

2. Recommended solution.

Amend GC 31722 to require that an application for disability retirement be filed within four months after the applicant knows or should know that his/her illness or injury has become permanent.

3. Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers.

Amend GC 31722 to state: "The application shall be made while the member is in service, within four months after his or her discontinuance of service, within four months after the expiration of any period during which a presumption is extended beyond his or her discontinuance of service, or while, from the date of discontinuance of service to the time of the application, he or she is continuously physically or mentally incapacitated to perform his or her duties **and files the application within four months of when he or she is or should be able to ascertain the permanency of the incapacity.**"

4. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

This issue affects all CERL systems.

5. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

No

6. Who will support or oppose this proposed change in the law?

Support: Plan sponsors; taxpayers. Oppose: Labor Unions

7. Who will be available from your association to testify before the Legislature?

Linda Webb, Retirement Administrator, VCERA

Lori Nemiroff, General Counsel, VCERA

Back-up: Art Goulet, Trustee

Email or mail your legislative proposals to:

Mike Robson and Trent Smith  
Edelstein, Gilbert, Robson, & Smith LLC  
1127 11<sup>th</sup> Street, Suite 1030  
Sacramento, CA 95814

Email to both:

[Mike@EGRSlobby.com](mailto:Mike@EGRSlobby.com)

[Trent@EGRSlobby.com](mailto:Trent@EGRSlobby.com)

## 2018 SACRS LEGISLATIVE PLATFORM WORKSHEET

Title of Issue: Trustee Authority Over Retirement Office Executive Staff

Association: Tulare CERA

Contact Person: Dave Kehler

Phone #: 559.713.2904

Fax #: 559.730.2631

Please answer the following questions as fully as possible:

**1. Description of issue.**

As currently written, California Government Code Section 31522.3 applies only to those individual counties (San Diego, Sacramento, Kern, San Joaquin, Marin) that have adopted the provisions through the legislative process. TCERA proposes that SACRS sponsors legislation that would make the provision of Section 31522.3 applicable to all '37 Act counties.

As revised, Section 31522.3 would clarify the hiring, direction, and dismissal power of the Board of Retirement over executive staff (i.e. the Assistant Administrator/CEO and CIO) for those plans that have such employee staff members. (Section 31522.2 already gives the Board such authority over the plan Administrator/CEO.) TCERA is of the opinion that it often has been presumed by all involved that the Retirement Board has had such authority over all of the Retirement Plan's executive level positions. The proposed revision to Section 31522.3 would align that presumption with the actual language of the law.

**2. Recommended solution.**

Remove subparagraph (c) from the language of Section 31522.3 so that the section can be made applicable to all systems covered by the CERL.

**3. Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers.**

*“(a) In a county in which the board of retirement or both the board of retirement and the board of investment have appointed personnel pursuant to Section 31522.1, the respective board or boards may elect to appoint assistant administrators and chief investment officers as provided for in this section. The positions of the assistant administrators and chief investment officers designated by the retirement board shall not be subject to county charter, civil service, or merit system rules. The persons so appointed shall be county employees and shall be included in the salary ordinance or salary resolution adopted by the board of supervisors for the compensation of county officers and employees. The assistant administrators and*

*chief investment officers so appointed shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of, the appointing board or boards. Specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal of the assistant administrators and chief investment officers by the appointing board or boards.*

*(b) This section shall not apply to any person who was an assistant administrator or a chief investment officer and was included in the county civil service or was subject to merit system rules on December 31, 1996."*

**4. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?**

The language of Government Code Section 31522.3 – and its current restrictions - is of interest to all '37 Act plans that have Assistant Retirement Administrator/CEO and CIO positions – not just to Tulare.

**5. Do you anticipate that the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?**

No.

**6. Who will support or oppose this proposed change in the law?**

We would not expect opposition to this proposal as the Section is already in place for some CERL systems. The proposed revision seeks to clarify the authority Board of Retirement have over the hiring, direction, and dismissal powers of the Board over executive staff of the Retirement plan.

**7. Who will be available from your association to testify before the Legislature?**

Dave Kehler, TCERA Retirement Administrator.

Email or mail your legislative proposals to:

Mike Robson and Trent Smith  
Edelstein, Gilbert, Robson, & Smith LLC  
1127 11<sup>th</sup> Street, Suite 1030  
Sacramento, CA 95814

Email to both:

[Mike@EGRSlobby.com](mailto:Mike@EGRSlobby.com)

[Trent@EGRSlobby.com](mailto:Trent@EGRSlobby.com)



**FOR INFORMATION ONLY**

October 23, 2017

TO: Each Member,  
Board of Retirement

Each Member,  
Board of Investments

FROM: Steven P. Rice *SPR*  
Chief Counsel

FOR: November 2, 2017 Board of Investments Meeting  
November 9, 2017 Board of Retirement Meeting

SUBJECT: Update on Work Plans for:

- (1) Proposal that Chief Counsel Report Jointly to Board of Retirement and Board of Investments, and
- (2) Proposal that Chief Investment Officer Report to Board of Investments

At the October 2017 Board of Retirement and Board of Investments meetings, staff provided the Boards with work plans for (1) the proposal that Chief Counsel position report jointly to the Board of Retirement and Board of Investments (Attachment A), and (2) the proposal that the Chief Investment Officer report to the Board of Investments (Attachment B).

As set forth in the work plans, various governance, legal, and implementation considerations need to be taken into account when assessing these proposed changes. For both positions, staff is actively engaged in the process of analyzing fiduciary issues and implications, conducting surveys of peer systems, researching the legislative history of relevant statutes, evaluating appointing authority responsibilities under LACERA's MAPP Ordinance and other relevant portions of the Los Angeles County Code, and consulting with staff regarding possible ramifications and effects. With respect to Chief Counsel, staff is also researching issues under the Civil Service Rules since that position is within the civil service.

Staff and outside fiduciary counsel Harvey Leiderman will present their analysis of these issues, and the others identified in Step 1 of the attached work plans, at

Re: Update on Work Plans/Chief Counsel and Chief Investment Officer Reporting  
October 23, 2017  
Page 2

the next Joint Organizational Governance Committee meeting, which will be on December 13, 2017. This is consistent with the schedules originally laid out in the work plans (which call for the Analysis phase of both projects to be completed in November 2017), and enables the work to proceed on schedule.

#### Attachments

cc: Robert Hill

James Brekk

Jonathan Grabel

John Popowich

Bernie Buenaflor

Harvey Leiderman

Fern Billingsy

Johanna Fontenot

Frank Boyd

Michael Herrera

Christine Roseland

John Nogales

Annette Cleary

**ATTACHMENT A**  
**CHIEF COUNSEL REPORTING WORK PLAN**

**October 2, 2017 Work Plan re  
Proposal that Chief Counsel Report Jointly to  
Boards of Retirement and Investments**

<b>TASK</b>	<b>COMPLETION</b>
<p><b>Step 1: Staff Analysis</b></p> <ul style="list-style-type: none"> <li>• The Role of Chief Counsel and the Legal Division</li> <li>• Survey of Peer Systems</li> <li>• 2008 LACERA Fiduciary Review by EnnisKnupp &amp; Associates</li> <li>• Review of Available Literature on Best Practices, including Stanford’s Clapman Report on Public Pension Governance, AFSCME Best Pension Practices Report, San Diego City Pension Governance Reports, and Others</li> <li>• Ethics and Conflict of Interest Issues</li> <li>• Review and Analysis of Fiduciary Issues and Implications in Performing Appointing Authority Role               <ul style="list-style-type: none"> <li>○ Independence</li> <li>○ Checks and Balances</li> </ul> </li> <li>• Review of Civil Service Considerations               <ul style="list-style-type: none"> <li>○ New Unclassified Position?</li> </ul> </li> <li>• Elements of Appointing Authority’s Responsibilities               <ul style="list-style-type: none"> <li>○ Hiring</li> <li>○ Performance Standards</li> <li>○ Goals</li> <li>○ Supervision and Monitoring</li> <li>○ Evaluation</li> <li>○ Feedback</li> <li>○ Compensation Setting</li> <li>○ Discipline</li> </ul> </li> <li>• Ramifications of Dual Board Reporting Structure, Including Coordination of Board Evaluations</li> <li>• Effect on Chief Counsel Supervision of Legal Division Staff, including Administrative Policies and Procedures</li> </ul>	<p>November 2017</p>

<ul style="list-style-type: none"> <li>• Effect on Chief Counsel Responsibilities for Counseling the Boards</li> <li>• Effect on Chief Counsel Responsibilities for Counseling Staff on LACERA Administration, Including Benefits, Disabilities, Investments, Human Resources, Facilities Management, Cybersecurity, Audit, Compliance, and Other Functions of LACERA's Divisions and Business Units</li> <li>• Review and Analysis of Relevant Existing Documents, including Class Specification, JOGC Charter, Board Charters, and Other LACERA and Board Policies and Procedures</li> <li>• Consultation with Legal Division Staff</li> <li>• Consultation with CEO</li> <li>• Consultation with Outside Fiduciary Counsel             <ul style="list-style-type: none"> <li>○ Implications of Fiduciary Counsel Policy</li> </ul> </li> </ul>	
<p><b>Step 2: Draft Supporting Documents</b></p> <ul style="list-style-type: none"> <li>• Class Specification</li> <li>• Salary Ordinance</li> <li>• JOGC Charter</li> <li>• Board Charters and Other Governance Documents</li> <li>• New Legal Division Charter</li> <li>• New Board Policy Setting Forth Hiring, Supervision, Reporting, Evaluation, and Discipline Standards and Processes</li> <li>• Other Documents, As Needed</li> </ul>	<p>January 2018</p>
<p><b>Step 3: JOGC Discussion and Recommendation</b></p>	<p>March 2018</p>
<p><b>Step 4: BOR and BOI Discussion and Action, If Recommended by JOGC</b></p> <ul style="list-style-type: none"> <li>• Joint Meeting, which will also include proposed Chief Investment Officer reporting change</li> </ul>	<p>April 2018</p>
<p><b>Step 5: Board of Supervisors Approval of Salary Ordinance Changes, If Approved by LACERA Boards</b></p>	<p>June 2018</p>
<p><b>Step 6: Implementation, If Approved</b></p>	<p>July 1, 2018</p>

**ATTACHMENT B**  
**CIO REPORTING WORK PLAN**

**October 2, 2017 Work Plan re  
Proposal that Chief Investment Officer Report to Board of Investments**


<b>TASK</b>	<b>COMPLETION</b>
<p><b>Step 1: Staff Analysis</b></p> <ul style="list-style-type: none"> <li>• Survey of Peer Systems</li> <li>• Elements of Appointing Authority's Responsibilities               <ul style="list-style-type: none"> <li>○ Hiring</li> <li>○ Performance Standards</li> <li>○ Goals</li> <li>○ Supervision and Monitoring</li> <li>○ Evaluation</li> <li>○ Feedback</li> <li>○ Compensation Setting</li> <li>○ Discipline</li> </ul> </li> <li>• Effect on CIO Supervision of Investment Office Staff, including Administrative Policies and Procedures</li> <li>• Review and Analysis of Relevant Existing Documents, including Class Specification, JOGC Charter, BOI Charter, and Other LACERA and BOI Policies and Procedures</li> <li>• Review and Analysis of Fiduciary Issues and Implications in Performing Appointing Authority Role               <ul style="list-style-type: none"> <li>○ Checks and Balances</li> </ul> </li> <li>• Review of BOR Policies, Roles, and Responsibilities</li> <li>• Consultation with CIO and Investment Staff</li> <li>• Consultation with CEO</li> <li>• Consultation with Outside Fiduciary Counsel</li> </ul>	November 2017
<p><b>Step 2: Draft Supporting Documents</b></p> <ul style="list-style-type: none"> <li>• Class Specification</li> <li>• Salary Ordinance</li> <li>• JOGC Charter</li> <li>• BOI Charter and Other Governance Documents</li> <li>• Investment Policy Statement and Other Policies</li> </ul>	January 2018

<ul style="list-style-type: none"><li>• New BOI Policy Setting Forth Hiring, Supervision, Reporting, Evaluation, and Discipline Standards and Processes</li><li>• Other Documents, As Needed</li></ul>	
<b>Step 3: JOGC Discussion and Recommendation</b>	March 2018
<b>Step 4: BOR and BOI Discussion and Action, If Recommended by JOGC</b> <ul style="list-style-type: none"><li>• Joint Meeting, which will include proposed Chief Counsel reporting change</li></ul>	April 2018
<b>Step 5: Board of Supervisors Approval of Salary Ordinance Changes, If Approved by LACERA Boards</b>	June 2018
<b>Step 6: Implementation, If Approved</b>	July 1, 2018



October 31, 2017

TO: Each Member  
Board of Retirement

FROM: Ricki Contreras, Division Manager   
Disability Retirement Services

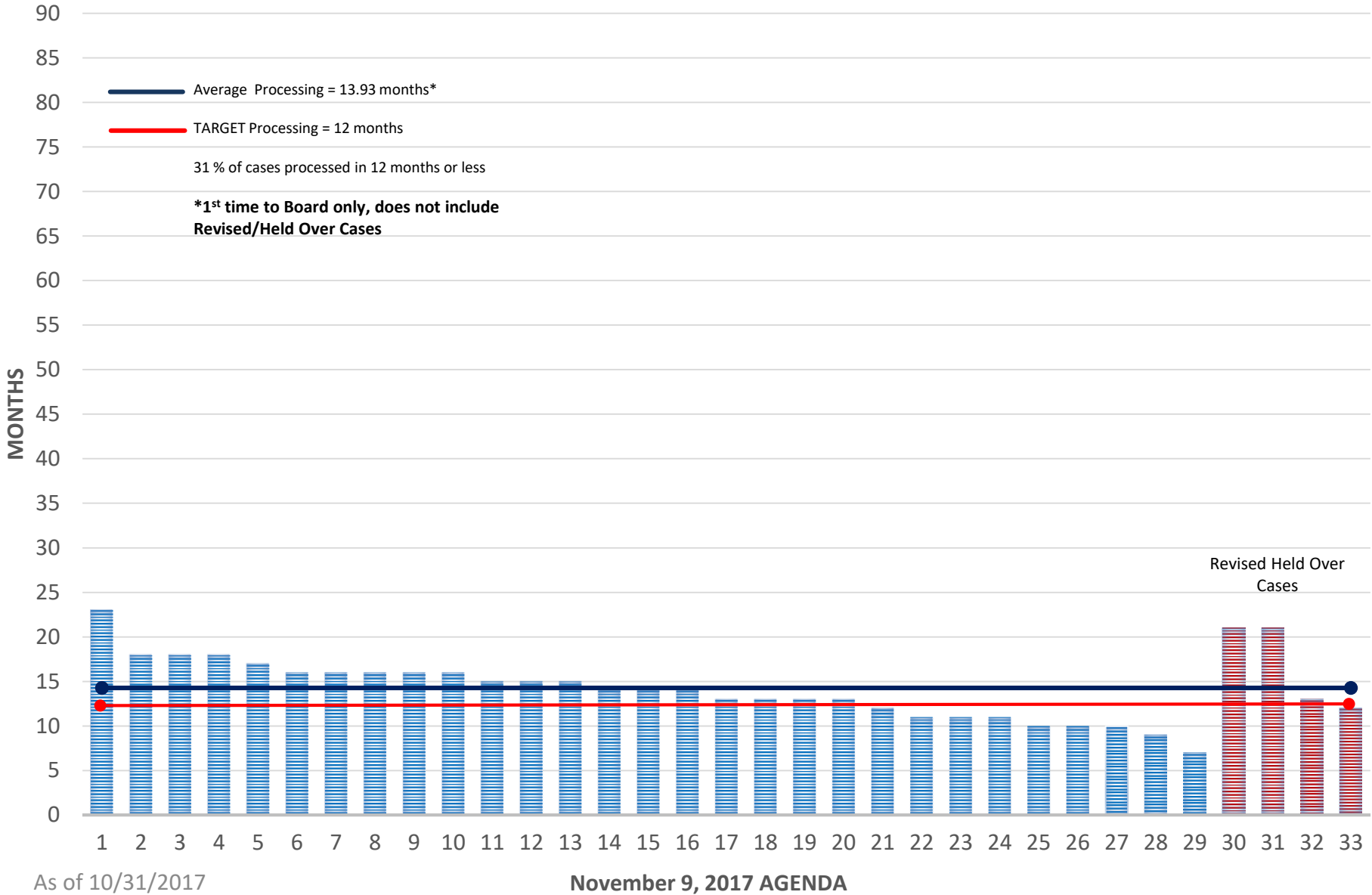
FOR: November 9, 2017 Board of Retirement Meeting

SUBJECT: **Application Processing Time Snapshot Reports**

The following chart shows the total processing time from receipt of the application to the first Board action for all cases on the November 9, 2017 Disability Retirement Applications Agenda.

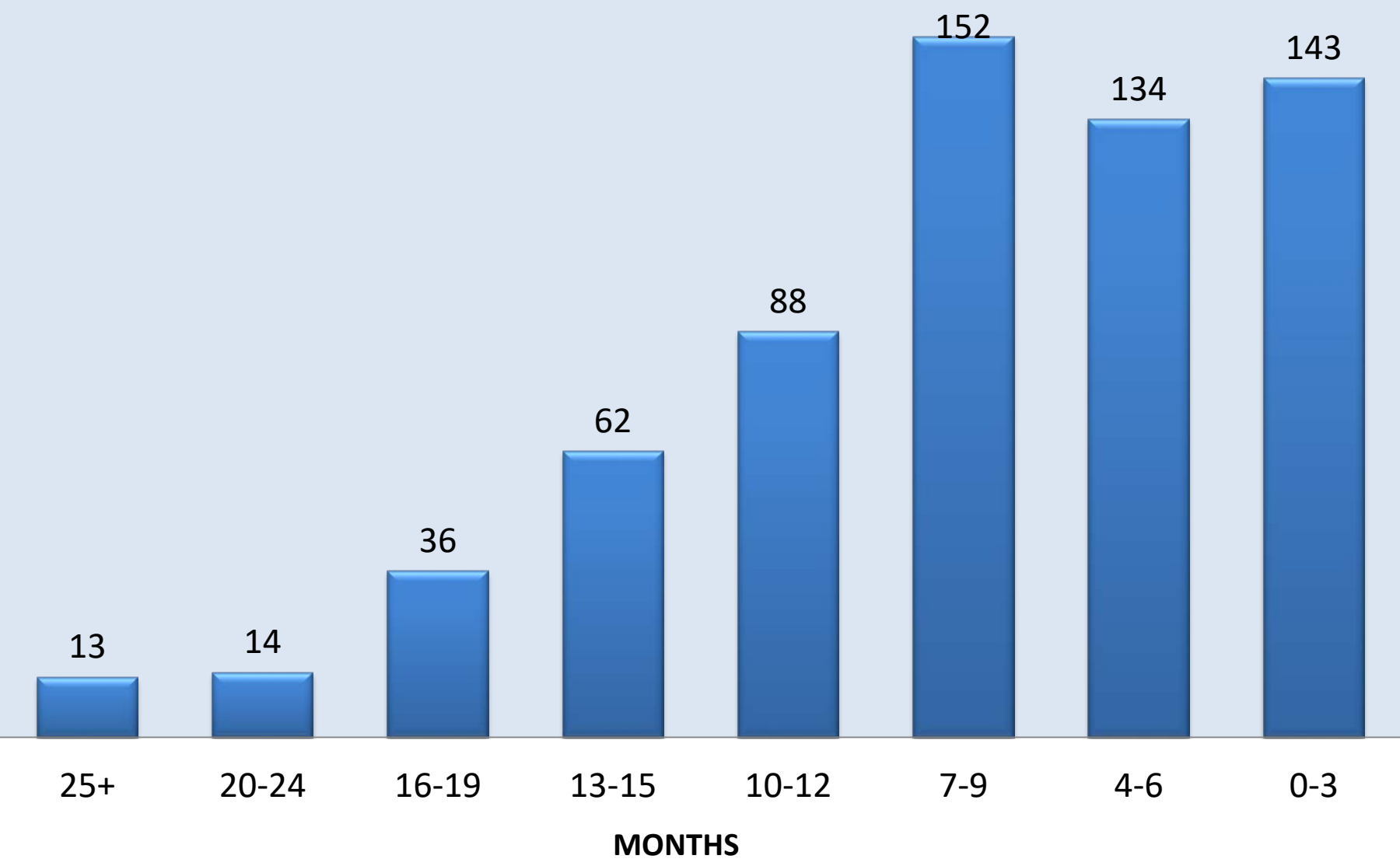
<b>Consent &amp; Non-Consent Calendar</b>				
<b>Number of Applications*</b>	29			
<b>Average Processing Time (in Months)</b>	13.93			
<b>Revised/Held Over Calendar</b>				
<b>Number of Applications</b>	4			
<b>Average Processing Time (in Months)</b>	Case 1 21	Case 2 21	Case 3 13	Case 4 12
<b>Total Average Processing Time for Revised/Held Over Calendar</b>	16.75			

# CASE PROCESSING TIME



# PENDING APPLICATIONS/TIME INTERVALS

NUMBER OF APPLICATIONS





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

**For further information, contact:  
LACERA  
Attention: Public Records Act Requests  
300 N. Lake Ave., Suite 620  
Pasadena, CA 91101**



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

**For further information, contact:  
LACERA  
Attention: Public Records Act Requests  
300 N. Lake Ave., Suite 620  
Pasadena, CA 91101**



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