

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

BUSINESS MEETING

OCTOBER 24, 2022

MINUTES

**TRUSTEES
PRESENT:**

Mike Sedell, Chair, Public Member
Arthur E. Goulet, Vice-Chair, Retiree Member
Jordan Roberts, General Employee Member
Cecilia Hernandez-Garcia, General Employee Member
Aaron Grass, Safety Employee Member
Kelly Long, Public Member
Tommie E. Joe, Public Member
Robert Ashby, Alternate Safety Employee Member
Will Hoag, Alternate Retiree Member

**TRUSTEES
ABSENT:**

Steven Hintz, Treasurer-Tax Collector

**STAFF
PRESENT:**

Linda Webb, Retirement Administrator
Lori Nemiroff, General Counsel
Dan Gallagher, Chief Investment Officer
La Valda Marshall, Chief Financial Officer
Brian Owen, Sr. Information Technology Specialist
Jess Angeles, Communications Officer
Chris Ayala, Program Assistant

PLACE:

In Accordance with Government Code §54953(e)(1)(A), and in response to the declared State and Local emergencies due to the Novel Coronavirus and Local Health Officer recommendation regarding social distancing, the Board of Retirement and its legislative bodies are holding meetings electronically and could be accessed below. Pursuant to Government Code §§ 54953(e)(2) and 54954.3, members of the public, to the extent required by law, will have the opportunity to directly address the Board concerning the below mentioned business.

TIME:

9:00 a.m.

ITEM:

I. CALL TO ORDER

A. Roll Call.

Chair Sedell called the Business meeting of October 24, 2022, to order at 9:00 a.m.

Roll Call:

Trustees Present: Aaron Grass, Art Goulet, Tommie Joe, Kelly Long, Jordan Roberts, Robert Ashby, Will Hoag, Mike Sedell.

Trustees Absent: Cecilia Hernandez-Garcia, Steven Hintz

II. APPROVAL OF AGENDA

Chair Sedell proposed several changes to the agenda: Move Item VII.E., and VIII.A. to be heard after item III, "Consent Agenda". Also move Item VIII.B. so that it would be heard after VII.E; also, postpone VII.B to the November disability meeting, because of the number of items on the agenda.

Trustee Goulet suggested that the Board also move agenda item VII.A., "Finance Committee Activities", to be heard after III.C., "Receive and File Fiscal Year 2021-22 Quarterly Financial Statements and Budget Summaries", because the items were related. He also requested to pull the minutes for September 26th from the Consent Agenda, as he had some questions related to it.

MOTION: Approve the Agenda, as Amended.

Moved by Goulet, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz, Hernandez-Garcia

Abstain: -

III. CONSENT AGENDA

A. Approve Regular and Deferred Retirements and Survivors Continuances for the Month of September 2022.

B. Receive and File Report of Checks Disbursed in September 2022.

C. Receive and File Fiscal Year 2021-22 Quarterly Financial Statements and Budget Summaries.

1. Staff Letter by Chief Financial Officer.

2. Financial Statements.

3. Budgets Summaries.

D. Approve Meeting Minutes for Disability & Business meeting of September 26, 2022.

Trustee Goulet noted on page 12, the word “fund” should be plural, and therefore changed to “funded”. Also, on page 13, the first 2 motions related to the approved 3% 401(k) contributions, were listed in reverse order.

Trustee Hernandez-Garcia arrived at 9:06 a.m., before the vote on the item.

Ms. Marshall said that at the Finance Committee of October 10, 2022, the Quarterly Financial Statements and Budget Summaries for Fiscal Year 2021-22 were reviewed by the committee and suggested changes were provided to staff. Staff they made the changes to the documents, which are provided for the Board’s consideration.

MOTION: Approve Consent Agenda, as Amended.

Moved by Roberts, seconded by Joe

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

After the vote on the item, the Board advanced to item VII.A., “Finance Committee Activities”.

IV. INVESTMENT MANAGER PRESENTATIONS

A. Receive Annual Presentation from Abbott Capital Management, Young Lee, Matthew Smith, and Arianna Merrill.

Young Lee, Matthew Smith, and Arianna Merrill reviewed Abbott Capital Management’s organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

B. Receive Annual Investment Presentation from Reams Asset Management, Clark W. Holland.

Clark W. Holland reviewed Reams Asset Management’s organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

Trustee Goulet returned to the meeting at, 2:46 p.m.

C. Receive Annual Presentation from Western Asset Management, Henry P. Hamrock and Julien Scholnick, CFA.

Henry P. Hamrock and Julien Scholnick reviewed Western Asset Management’s organizational changes and discussed the firm's investment outlook, portfolio strategy, composition, and investment portfolio performance, and then responded to trustee questions.

V. INVESTMENT INFORMATION

VCERA – Dan Gallagher, Chief Investment Officer.
NEPC – Allan Martin, and Brendan Heaney.

A. \$100 Million Commitment to PIMCO Corporate Opportunities Fund IV.
RECOMMENDED ACTION: Approve.

1. Staff Letter by Chief Investment Officer.
2. Joint Fund Recommendation Report from NEPC.
3. PIMCO Corporate Opportunities Fund IV Presentation: Kevin Gray, Neil Reiner and Catharine Roddy.

Mr. Gallagher said this would be VCERA's third PIMCO Private Credit Fund Investment and it was targeted to deliver attractive risk-adjusted returns, of about 15% net. It was designed to capitalize on the volatility and dislocation that he and NEPC felt would continue to accelerate. Therefore, they believed that it would be good fit for VCERA's Private Credit portfolio.

MOTION: Approve Commitment of \$100 Million to PIMCO's Corporate Opportunities Fund IV, and Direct Staff and Counsel to Negotiate the Necessary Legal Documents; and to Authorize the Board Chair or the Retirement Administrator, or if Both Unavailable, the Chief Investment Officer to Approve and Execute the Required Documentation.

Moved by Long, seconded by Grass

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

B. \$10 Million Add-On Commitment in Pantheon Credit Opportunities Fund II.
RECOMMENDED ACTION: Approve.

1. Staff Letter by Chief Investment Officer.
2. Joint Fund Recommendation Report from NEPC.
3. Pantheon Credit Opportunities Fund II Presentation: Rick Jain, and Iain Jones.

Mr. Gallagher reminded the Board that at the June business meeting, the Board had approved a commitment of \$40 Million to their first Private Credit Secondary Fund-of-Funds, which was Pantheon's Credit Opportunity Corporate Opportunities Fund. The fund was off to a very strong start, having already produced top quartile performance for 2020 vintage year fund, and the proposed \$10 million add-on would increase VCERA's commitment to Private Credit Lending Fund 2 from \$40 million to \$50 million and would provide an additional 5 basis points size discount, which would apply to the entire \$50 Million commitment.

MOTION: Approve \$10 Million Add-On Commitment to the Pantheon Credit Opportunities Fund II; and Authorize the Board Chair or the Retirement Administrator, or if Both are Unable, the Chief Investment Officer to Approve and Execute the Required Documentation.

Moved by Joe, seconded by Goulet

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

C. Preliminary Performance Report Month Ending September 30, 2022.

RECOMMENDED ACTION: Receive and File.

Mr. Martin presented the Preliminary Performance Report for Month Ending September 30, 2022.

MOTION: Receive and File.

Moved by Joe, seconded by Sedell

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

VI. OLD BUSINESS

A. Reconsideration of Circumstances to Enable Board to Hold Meetings via Teleconference Under the Provisions of Government Code Section 54953, Subdivision (e), of the Ralph M. Brown Act, Due to State of Emergency and Consider Authorization for Continued Remote Teleconference Meetings.

1. Staff Letter from Retirement Administrator.

2. Letter from Dr. Robert Levin, Ventura County Health Officer.

MOTION: Approve 30-Day Teleconferencing for the Period of October 24, 2022, to November 23, 2022.

Moved by Joe, seconded by Roberts

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

After the vote on this item, the Board advanced to item, VII.C., "Quarterly Chief Investment Officers Report for July - September 2022".

VII. NEW BUSINESS

A. Finance Committee Activities.

RECOMMENDED ACTION: Receive and file.

1. Letter from Finance Committee Chair.

Trustee Goulet said that the Finance Committee had recently reviewed the Quarterly Financial Statements and Budget Summaries for Fiscal Year 2021-22 and recommended that staff place them on Consent Agenda.

MOTION: Receive and File.

Moved by Joe, seconded by Goulet

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

After the vote on this agenda item, the Board advanced to item, VII.E., "Recommendation to Adopt Resolution to Implement Changes to Compensation Earnable Resolution in Compliance with the California Supreme Court Decision, Alameda County Sheriff's Assoc. Et Al., v. Alameda County Employees' Retirement Assn., Et Al. (2020) 9 Cal.5th 1032 ("Alameda") Following Governor Newsom's Veto of Assembly Bill 826".

- B. Quarterly Retirement Administrator's Reports for April – June and July – September 2022.
RECOMMENDED ACTION: Receive and File.
To be Provided.

Note, this item was moved to a future meeting, during the approval of the agenda.

- C. Quarterly Chief Investment Officer's Report for July - September 2022.
RECOMMENDED ACTION: Receive and File.

MOTION: Receive and File Quarterly Chief Investment Officer's Report.

Moved by Joe, seconded by Goulet

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

- D. SACRS Business Meeting Agenda Items.
RECOMMENDED ACTION: Give Direction to Voting Delegate.

1. SACRS Fall Conference Business Meeting Packet.
2. SACRS Fall Conference 2022 Preliminary Agenda.

Chair Sedell asked Trustee Hoag, the Board's appointed Voting Proxy if he had any questions regarding those items on the SACRS Business meeting agenda.

Trustee Hoag said no, he did not have any questions.

After the discussion of this item, the Board advanced to informational item IX.A., "SACRS Legislative Update – October 2022".

E. Recommendation to Adopt Resolution to Implement Changes to Compensation Earnable Resolution in Compliance with the California Supreme Court Decision, *Alameda County Sheriff's Assoc. Et Al., v. Alameda County Employees' Retirement Assn., Et Al.* (2020) 9 Cal.5th 1032 ("Alameda") Following Governor Newsom's Veto of Assembly Bill 826.

1. Staff Letter from Retirement Administrator.
2. Letter from Governor Newsom, Veto of AB 826.
3. Proposed VCERA Resolution Regarding Correction of Pensionability of Flex Credit and Veto of Assembly Bill 826.
4. Letter from County of Ventura to Board of Retirement Regarding Continued Inclusion of the Flexible Credit Allowance as Compensation Earnable for VCERA Legacy Members, Dated October 14, 2022.
5. Letter from Ventura County Deputy Sheriffs' Association (VCDSA) to Board of Retirement Regarding the County of Ventura's Flexible Credit Allowance as Compensation Earnable for VCDSA Legacy Members, Dated October 19, 2022.

Chair Sedell noted the difficulty the issue presented to the organization because they understood the implications of the actions, they may need to take but the Board was required to follow the law. He understood how the majority of Board members felt about the issue, recognizing the value of the County of Ventura employees as well as retirees. However, the Board needed to carefully look at both sides of the issue and determine what they could legally and appropriately do regarding the issue, while moving forward with their partners.

Ms. Webb provided a brief background. The *Alameda Decision* was issued in July 2020, and in October 2020, the Board adopted the proposed Resolution, but deferred action on the "Alameda Exclusions" (paragraphs 3, 6, and 9), pending a filing of a Declaratory Relief action with the Court. At that meeting, staff and counsel warned that this approach could be unsuccessful given that the Board declined to adopt the paragraphs that would create the necessary controversy on which the Court could rule. This proved to be the case; the County of Ventura demurred, and the declaratory relief hearing took place on June 14, 2021. On July 2, 2021, the Court sustained the demurrer, finding that no cause of action existed because the Board declined to adopt the controversial paragraphs of the Resolution. Thus, the declaratory relief effort did not provide the guidance the Board was hoping to receive. SEIU and the County of Ventura sponsored Assembly Bill 826 (AB), in an effort to find a legislative solution to allow the non-cashable portion of the Flexible Credit Allowance to be included in compensation earnable that was used to calculate retirement benefits for VCERA's Legacy members, however it was met with opposition and despite the proposed bill going through some changes, it was eventually moved to "Inactive" status.

Staff returned to the Board with an update on the bill in September 2021, indicating the intent to return at the following meeting with the recommendation to implement paragraphs 3, 6, and 9 as originally proposed. The Board had received letters from the County of Ventura and other stakeholders, requesting the Board delay any action to exclude non-cashable flex credit to allow the

County more time to discuss the bill with SEIU, with the goal of it being considered in January 2022 for the following legislative session. The Board decided to take no action at that time and directed staff to provide the Board with any and all updates on the issue and to bring the item back at the December 2021 Business meeting for reevaluation. Staff brought an update of the bill to the Board in December, but no action was taken.

AB 826 was amended significantly to narrow its focus to Ventura County only, which would have allowed VCERA Legacy members who retired on or before December 31, 2025, to include the entire flex credit allowance amount in their compensation earnable. It would have effectively created a "window period", in that the benefit would be included temporarily, but ultimately be excluded after that date, and those who did not retire prior to that date would receive a refund of their contributions. The bill progressed through the legislative process, but on September 29, 2022, Governor Newsom vetoed AB 823. His veto message said the bill would inappropriately incentivize noncompliance with the Public Employees' Pension Reform Act (PEPRA) and would undermine the intent of PEPRA and the provisions were an attempt to circumvent recent court decisions.

Ms. Webb said these events brought VCERA back to the provisions of the original proposed Resolution. The Board of Retirement had made good faith efforts to find a legislative and legal pathway for allowing non-cashable portion of flex credit to be included in compensation earnable, but those efforts had been exhausted. Therefore, staff in coordination with General Counsel and Fiduciary Counsel, was once again bringing a Resolution to the Board for adoption.

Ashley Dunning, Fiduciary Counsel for VCERA then presented the Resolution to the Board and walked them through its provisions.

Trustee Long asked for Ms. Dunning to clarify item 3 in the proposed Resolution that described overpayments and recouments.

To illustrate, Ms. Dunning used an example of a Legacy member currently retired and receiving a \$5000 per month benefit of which \$500 was attributable to including non-cashable flex credit, and that member had been retired for 1 month. Also, over the course of their 20 years of service, the member had paid contributions because of the inclusion of the non-cashable flex credit allowance in compensation earnable. If they paid \$10,000 in contributions that they should not have paid; not counting interest in this example, the employee would receive a refund of \$9,500 in overpaid contributions.

Ms. Webb said that more than 700 members had retired since the Alameda Decision was issued, the majority of whom were Legacy members who had made contributions on the non-cashable portion of the flex credit allowance. Some of the members had been retired for 2 years, while others have only been retired a few months. VCERA staff would look at the amount of contributions these members had paid on the non-cashable portion of flex credit and also calculate how much they were overpaid. Based on the terms of the Resolution, if the overpayment amount exceeded the contributions, VCERA would not recoup the difference; however, if the contributions exceeded the amount of the overpayment, VCERA would refund the difference once interest was applied. Also, based on a preliminary calculation, it appeared that those members who retired during the first year following the Alameda Decision were more likely to have their overpayment exceed their contributions. Essentially, if they owed VCERA money, VCERA would not seek to recoup it, but a retired member who had contributed more than the overpayment would receive the difference.

Trustee Long then asked if they could explain the timing of the provisions of the proposed Resolution.

Chair Sedell said that the Board could discuss the timing during their Closed Session meeting.

Ms. Webb said she could hit the highlights related to timing of the implementation of the Resolution's provisions. The priority for VCERA staff would be to stop the overpayment of benefits to retired members, so that they could adjust the benefits going forward. Existing experienced staff would process those calculations, while the extra temporary resources previously pledged by the Board would perform lower-level clerical duties to ease the workload of the more experienced staff.

Staff was exploring tools and programming to assist staff with those recalculations, because V3 was not currently able to perform mass retiree recalculations; however, staff was working with the vendor to accelerate that process. As for the active members, she had been in contact with the Auditor-Controller's office and they pledged to put all the resources they could spare toward this effort, if the Board adopted the proposed Resolution. But the first priority for the active members would be to stop collecting the overpaid contributions from active members, which required some programming to be done to the Ventura County Human Resources Payroll System (VCHRP), so that they were no longer collecting on the non-cashable portion of the flex credit allowance. However, given the County and recently started at the open enrollment process for health benefits for its employees, VCERA had been told it could take several months before that programming was completed. Also, the Auditor-Controller's Office was already working on previous corrections, such as "situational" codes.

Trustee Long stated that refunds to the employee would happen on a one-time basis, but no employees would be required to pay back the pension plan.

Ms. Webb further explained that there would be no recoupments from active employees because these members would have just overpaid in contributions, and only members who had retired since the *Alameda Decision* would have an overpayment.

Trustee Long then asked when the one-time refund would go out for the members who over contributed because of the inclusion of the flex credit.

Ms. Webb replied that staff would need to do all the recalculations first and until staff was able to gain traction on the recalculations, she will not be able to estimate time frame for the refunds. Also, once everything was recalculated, including the interest, staff would then send a notice to the affected members to explain the change and timing.

Trustee Long asked if Ms. Webb thought it would happen maybe during the next fiscal quarter.

Ms. Webb said that the population was still growing until the Board took action to exclude, and then the timing would depend on when staff would get the additional resources and get them trained, as well as the V3 mass calculation programming.

Chair Sedell said that the Board should wait to discuss the details of the issue in Closed Session.

Trustee Long noted that once staff paid back the members who were owed a refund, then staff would also need to notify the members that their pension checks would be less than they previously received. She asked when VCERA staff be notifying the members of this.

Ms. Webb explained that the members who had retired following the *Alameda Decision*, were notified at retirement that the issue was pending and that the non-cashable portion of the flex credit that been previously included could change in the future, which would lower their benefit. So, staff would notify the members about the history of the issue and what action the Board had taken and then what their new benefit amount would be going forward, along with an estimated date when that change will take place. Further, that VCERA would not be seeking a recoupment of overpayments, but if retirees were

owed a refund, they would receive that. At every step, VCERA staff would be notifying the members affected about the status on the process.

Trustee Grass asked how far back VCERA staff was suggesting that they calculate the overpayments of the flex credit for Active and Retired employees.

Ms. Webb said staff would go back to the point when they began contributing for the non-cashable portion of the flex credit, which would stretch back to the 1990s, because any contributions that a member paid toward a benefit that should have been excluded would need to be refunded as far back as they paid those contributions.

Trustee Grass then remarked that the timing of the proposed Resolution was particularly troubling to him, because they were unsure of when they would be able to send refunds to the members who had over contributed, but they would be reducing their pension benefits soon. For instance, if a member were to retire in November, they would receive a lower pension benefit, without any indication of when they might receive a refund for their overpaid contributions. They were considering action that would lower a member's pension by \$800 to \$1,000 a month, with a promise that in 180 days or maybe a year they would receive a refund.

Chair Sedell said that he believed that Trustee Grass's concern was that the refund of overpaid contributions toward flex credit would not be done at the same time that the members pension benefits would be lowered. However, he believed that they would be done at the same time.

Ms. Webb explained that staff would calculate new Final Average Compensation for the retirees, the overpayments, and overpaid contributions, and then in one transaction the retired members would have new pension benefit amount, a refund if applicable, or notification that they had been overpaid, but that VCERA would not be seeking repayment of those overpayments. Therefore, for the retired members it would all happen at the same time.

Trustee Grass said that he was not talking about the retired members, but rather about an employee who may retire in the near future, possibly November 15th, for example. Then, in 180 to 360 days they may possibly get their refunds, but no one really knew exactly when, but their actual pension benefit would get reduced immediately.

Chair Sedell then reiterated that they should wait to discuss the details of the issue in Closed Session.

Dr. Sevet Johnson, Chief Executive Officer for County of Ventura, provided public comment. She thanked the Board for taking time to consider the matter before them. It was likely one of the most important decisions that the Board of Retirement had been asked to make in more than a generation. Their decision would have significant impact on the financial wellbeing and stability of the retirement of many of their hardworking public servants who were members of the retirement system, for which they were fiduciaries. Although she was not a lawyer, she would ask that the Board would carefully consider the issue before they took any action on the matter, because their decision would cut the pension income for approximately 5,000 of their members, and she hoped to be their voice today. As they already knew, regrettably after two years of concerted effort by the County, Labor Partners and Assembly Member, Jacqui Irwin, to gain legal clarification through the passage of AB 826, legislation pertaining to the inclusion of the Flex Credit in pension compensation, the Governor made the decision to veto the bill, which would have helped their members preserve the pensions benefits they thought they had. The County appreciated Assembly Member, Jacqui Irwin, her staff, and all the labor partners because of their effort. The County also appreciated VCERA's counsel's advice and the advice of their pension administrators, they were doing their job by providing the

Board with conservative advice. The proposed Resolution before the Board, attempted to summarize over 2 years of different legal opinions and actions with regards to the Alameda Decision. It had always been the opinion of VCERA staff and counsel that the Alameda dictated the exclusion of what they referred to as the non-cashable portion of the Flex Credit from pension compensation. As they knew, the County has never agreed with this opinion. Similarly, the resolution contends that on October 12, 2020, that the Board passed a resolution that excluded portions of the flex credit, but then deferred implementation of such action until judicial review of the issue. The County did not agree with the characterization. The Board did not pass such a resolution, the specifically excluded passage of the pertinent sections and reserved them for review at a later time. For that reason, they believed that the resolution put before the Board today was incomplete and inaccurate. The decision before the Board should be stated, not as how contributions should be returned, but as to whether the Board of Retirement would decide to exclude any portion of the flex credit for legacy members pension compensation, and when any when any such exclusion would take effect. The County therefore asks on this ground alone that the Board reject the resolution before them. Since AB 826 was vetoed, the County had been working diligently to identify alternative solutions in the event the Board decided to exclude portions of the flexible credit allowance. The County was committed to working with their Labor Partners to find acceptable solutions, but the determination and implementation of such solutions for impacted members would take some time. Delaying implementation of the resolution would cause the least harm to the members who have been relying on the inclusion of the flex credit in their pensions for decades. She then thanked the Board for their time and consideration.

Trustee Long said that Dr. Johnson had mentioned that the resolution had not been accepted. Could someone comment on that and what the difference was in the resolution and if paragraphs 3,6, and 9 were included or not included.

Ms. Webb said that she believed that Dr. Johnson was referring to the original action that took place in 2020, regarding paragraphs 3, 6, and 9. She believed that Dr. Johnson was asserting that those paragraphs were excluded all together from the adoption at that time. Ms. Webb had personally listened to the motion in the recording multiple times to ensure correctness. The motion was to pass the Resolution, but deferring 3, 6, and 9, and the motion was made by Supervisor Bennett, who had been serving on the Board at that time. Staff could make that recording available, and she believed that the recording had previously been sent to the County at their request.

Trustee Long then asked if the Resolution had returned to the Board afterwards for discussion.

Ms. Webb said that it had returned to the Board more than once and the Board continued to defer action to allow all of these legal options to play out. So, the Declaratory Relief was the initial reason for deferring implementation of those paragraphs and then it was deferred again to see if AB 826 would resolve the issue. This was why staff was now bringing the item back with a Resolution that would implement the provisions of the original paragraphs 3, 6, and 9, as well as the other terms that Ms. Dunning described in her recitation of the Resolution.

Trustee Grass said that he wanted the Board to be clear on what the CEO's office was asking for, which was to postpone any further action until April, so they could negotiate with the unions.

Ms. Webb said that she understood the County was also requesting that the Resolution not be retroactive, and that the Board not make it effective until April 2023.

Chair Sedell asked if the staff had received any correspondence from the County or any of the other stakeholders so far that stated that there was any ability for the Board to legally delay the exclusion of the non-cashable portion of the flex credit.

Ms. Webb replied that the only legal opinions received had been through VCERA's own General Counsel and Fiduciary Counsel, but as she pointed out in her staff letter, AB 826 would have created what's called a "window period", which would have allowed the non-cashable portion of flex credit to be included for those who retired up until the end of 2025; however, it was vetoed. If the Board were to not make exclusion effective until April 2023, the Board would be essentially creating its own window period, which was a concept that was strongly rejected by the Governor's veto.

Chair Sedell said that it was a concept that Board would need to discuss in the closed session meeting, but what he wanted to know was if anything had been provided to staff, such as a legal opinion that was different than VCERA's Counsel's opinion, so that they could discuss that also in the closed session meeting.

Ms. Webb said that staff had not received anything from the County Counsel's Office or any of the attorney's representing the unions that said creating a window period was lawful.

Nick Odenath, President of VCDSA, provided public comment. He said he first wanted to thank the Board for the opportunity to speak. The VCDSA represented approximately 1,100 Active and Retired D.A. Investigators and Deputy Sheriffs in Ventura County. Unfortunately, AB 826 was vetoed as they all knew by Governor Newsom, and now the Board was having to make the tough decision regarding pension benefits for County employees. Should the Board decide to not allow the Flexible Credit Allowance to be pensionable, they would be cutting some County employee pensions by more than 20% and potentially taking a significant portion of the benefit away from those who have already retired after spending much of their adult life serving the County. Both he and the VCDSA Board respectfully requested that VCERA's Board wait to remove the Flexible Credit as pensionable, until April of 2023. They asked that the Board give them time, the time it will take for them to negotiate with the County on an appropriate solution that would leave our active Legacy members whole upon retirement. To be clear they were prepared to negotiate with the County to address the issue and had already had initial conversations with the County, letting them know that they were willing and ready to address this issue and negotiate at the table. They have been waiting 2 years on the legislation and they were simply asking for a few more months to address it with the County. In addition, it was their opinion that the VCDSA Board and their legal counsel believed that the removal of the flexible benefit did not need to be retroactive. The removal of the benefit did not and should not impact any of their retirees. They also believed that the pension modification should impact only those who retire after it was implemented and so again, they were asking that the implementation of the resolution not occur until April 2023 to allow time to negotiate. To the VCDSA members who were listening, please know that the VCDSA Board was prepared to take legal action in the event that the pension benefit removal negatively impacted the retired or active members. Should the VCERA Board decide to implement this reduction immediately it would cost a significant amount of money to VCERA in calculating the repayment of contributions and litigation. However, by waiting a few more months and not applying the reduction retroactively, VCERA would not need to take on this costly endeavor. Finally, the timing of the proposed pension reduction comes immediately after the VCERA CEO, and Legal Counsel received a generous increase to their salary and Deferred Compensation package. Mr. Odenath said he found it concerning that they would agree to this benefit enhancement at the same time that they are proposing a significant reduction to all County employee pension benefits. It simply did not look good. Should anyone have any questions, please feel free to reach out to him, and his contact information was on the letter that he had submitted to the VCERA Board last week.

Blair Brim, Business Representative for IUOE Local 501, provided public comment. He said that he represented a little more than 200 employees of the County, who were Heavy Equipment Operators and Maintenance Workers, and I.T Technicians. He concurred with everything that Mr. Odenath said 100% and he was amazed that the issue had occurred at all, and that legal counsels had decided to

take a portion of the benefit away. However, he would just like to say that he concurred to the degree that the labor unions needed time to work with the County to work out some alternative to the problem. Therefore, if the Board could please take Mr. Odenath's comments and make them his as well, he would appreciate it.

Tom Adelman, Member, SEIU Local 721, provided public comment. He had worked for the last 26 years as a Respiratory Therapist at both at Ventura County Medical Center and Santa Paula Hospital. He was a Classic or Legacy member of SEIU 721, and as they all knew SEIU 721 represented the largest group of employees, of which the majority were Legacy members. What was being proposed would affect all Legacy members who had been working for decades to keep the County working. The blow they just received from the Governor's veto of AB 826 was a complete shock to everyone, and he believed that everyone on the Board was probably just as shocked as all of the members it affected. Especially, since they seemed to have had the support from the local County government, all the way up to the top state legislators. The immediate potential loss to a member's pension had a significant impact to any member, but it would impact their lower paid employees the most, even though all members could see a retirement income loss of 10 to 20 percent or greater, at a time when people are dealing with record inflation and trying to provide a family a holiday season after two years of being locked down. He was sure a lot of the retirees would like to travel to see people they had not been able to see, and the Board's action could significantly affect these retirees' ability to do so. He could not imagine that a retiree on a fixed income could lose 20% of their income overnight, and even if they were still working and had the potential to maybe work longer, losing 20% of their income overnight was obviously devastating. That was why he was asking the Board on behalf of all the Legacy member of SEIU 721, to allow them the time to negotiate with the County to minimize the great retirement loss, and so he respectfully requested that they postpone any decision on the issue, until after April 1st of 2023. He believed it was the least a person could do to assist all the hard-working employees who spent decades of their lives working, and making the County work, with a promise they would have a specific level of guaranteed financial stability, which was now in question. They would like some time to help work through the matter with the County.

Joe Mulrooney, Sergeant, Ventura County Sheriff's Department, provided public comment. As a Ventura County employee for almost 30 years, who had been promised a benefit that was now being attacked, he was concerned not only with the issue of removing the portion of the flex credit, but on how those calculations were going to be calculated. Because it was his understanding that they would receive the flex credit amount in their pension as it was a negotiated, in lieu of salary increases and so he did not know how someone could determine that it was an in-kind benefit, when it was a negotiated item. In addition, as he was listening to the Fiduciary Counsel, he heard how the flex credit was to offset of cost of medical benefits, but the County did not sponsor the VCDSA medical plans, because they were actually paid for by VCDSA members through a third party, through VCDSA. It was negotiated through a private entity for medical benefits, so those funds were coming to the members and then out from the association. Now, granted they are a reduction in pay that was agreed upon for opportunity to have deductions from their paychecks to pay those entities, but it went through the VCDSA, to a third party. So, in fact it would be a cash payment to the members, who then agreed to a deduction in their salary as a direct payment to that third-party entity. Therefore, he was curious as to what portion of the Flex Credit would be considered cashable as it related to determining how much was paid or was pensionable. Another concern he had was related to how those calculations were going to be construed, because he had heard that the calculations would go back to 2013, 2016, or 2019, when their members started paying for their own portion of their retirement for the Flex Credit, and it was also my understanding that in the 1980s their membership in VCDSA included payment for their portion of the retirement, again in lieu of cash compensation the County would take on the responsibility of paying for the member's portion of their retirement, prior to PEPR, which was no longer allowed as something that could be negotiated. Also, did the County

have the records that went back almost 30 years, to figure out what amount was set aside for him within the VCERA retirement program, because again that benefit had been negotiated on their behalf. He was also curious to know the process would ensure that it was fair and equitable, if the Board moved forward with adopting the resolution, against the requests of membership, not only for the VCDSA members, but for all the different unions represented throughout the County. Because he believed that a forensic auditor would have difficulty with the calculations, and he seriously doubted that staff would quick access to the members' records, but he had heard Ms. Dunning say it was VCERA's priority to get the members records to make the calculations, as quickly as possible from the Auditor-Controller's office, because he could not imagine that in his case, it would be easy to get 27 years' worth of records and in some other cases, it would be more than 30 plus years of records for those who had recently retired. Even with an army of forensic auditors, it could take anywhere from 3 to 5 years or more, and yet they were making this quick decision. This was why he supported both the County and Mr. Odenath and the other union leaders in delaying the implementation of the resolution, so that they did not have to spend the money on a forensic auditing team and save VCERA funds. He felt it would be much cheaper and faster way to resolve the situation than what was being proposed today.

Kevin Aguayo, President of the Ventura County Professional Firefighters' Association (VCPFA), provided public comment. He said he would continue to echo what his other labor partners and Dr. Johnson had previously said by also asking that the Board give the labor groups time to negotiate with the County to keep their members whole. The hits to the members would come at a huge cost. After reading the letter provided by Dr. Johnson, and Mr. Atin had written to VCERA, which related the statistics of the issue, it showed that it would have a real impact. He said Board had to give them time to negotiate, within the spirit of PEPR. PEPR had a five-year window for implementation, and he knew that the Board initially had a "glide path". He requested the Board give time by delaying the implementation, as much as legally possible and to give labor groups the opportunity to negotiate with the County, so they could have come to some type of resolution. He thanked the Board for their time and said, to Chair Sedell, the other trustees, and the staff of the VCERA, he knew that it had been a trying moment for them but was more trying for the labor groups and their members who were looking to them for leadership and guidance, and now they were looking to the Board to do the right thing and make sure their members could stay whole.

Bryan Toledano, Labor Representative for the Union of American Physicians and Dentists, provided public comment. He also wanted to echo the message from Dr. Johnson, Mr. Odenath, and Mr. Aguayo and what the rest of the labor partners had said, in terms of providing them time to work out the issue. He believed that Mr. Aguayo put it best when he said that the numbers do have real consequences. The Union of American Physicians and Dentists, which he represented was a relatively new unit, but they were aware that the matter would have a significant impact.

Danny Carrillo, Regional Director for SEIU 721, provided public comment. He asked to go on record by joining with the other labor partners, who had previously commented, by also requesting an extension for time to negotiate, with both the County and other labor groups. It was a very unfortunate circumstance that the Governor had vetoed the bill they had worked so hard on; nonetheless, SEIU 721 was also asking for more time to negotiate the issue with the County.

Ms. Webb noted that Trustee Hintz had sent an email to the Board regarding the resolution, as he was not able to attend the meeting, which she would read into the record. He initially said that he had supported the resolution, as presented, however he then said that he had one caveat. The one caveat, he had was the effective date of the resolution. He believed there was no need to rush into a final decision without giving the County the time to consider alternative methods of enhancing retirement checks, that did not involve employee contributions and VCERA funds. For example, his Judicial retirement paycheck contained two enhancements, one cash offset for Medicare and one

that was for cost reductions for supplemental medical plans, which were separate from the retirement calculation. He then said that it would not surprise him if the County would try to minimize the optics of taking money away from retirees by announcing some sort of offset at the same time. He suggested making the Resolution effective in February or March 2023.

Chair Sedell said the Board would be go into recess for the regular meeting, so that could move to a Closed Session meeting, and he would like to provide everyone attending a 5-minute notice before the Board reconvened to the public meeting, so that those who were listening remotely.

Trustee Long noted that she would not be attending the Closed Session, as she was employed by the County.

Chair Sedell clarified that Trustee Long had recused herself from the Closed Session meeting, because she was a member of the Board of Supervisors for the County of Ventura, and not necessarily because she was employed by the County.

Trustee Long said she appreciated the clarification.

The Board left the Public meeting to enter the Closed Session meeting at, 10:33 a.m., to discuss item VIII.A., "CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) of Section 54956.9: One (1) Case: Dispute re Flex Credit Correction Resolution".

The Board reconvened to the Open Session at, 12:08 p.m.

Chair Sedell called the reconvened session to order. He then asked Ms. Webb to reintroduce the agenda item.

Ms. Webb explained that the Board would now discuss the issue, and vote on whether to approve the recommendation to adopt the resolution, or to take an alternative action.

Trustee Long said that because she did not attend the Closed Session, she wanted to ask if there was a possibility to move forward with an understanding of the process. Once they had decided on a plan, they could possibly approve the Resolution. She also asked why the Board would need to approve the proposed Resolution now, without knowing all of the changes and all the processes. Because she would like the Board to have an understanding of that process before approving the Resolution, as opposed to approving a Resolution and then finding out the process after the fact.

Chair Sedell said that this posed a dilemma for staff because they could not propose an implementation process until they knew what the Board's decision was on the Resolution and what then needed to be done.

Trustee Long then asked when the Board would be able to approve the implementation of the Resolution.

Chair Sedell said that he hoped the Board would be able to approve the implementation at the Board's next business meeting.

Ms. Webb noted that staff believed they could process the recalculations for retirees in 4 to 5 months, but again that was assuming that the Board adopted the Resolution today, because it would stop the increase of retirees into the population whose benefits would need to be recalculated. She envisioned they would be able to do that with existing staff, but they would need to bring in some

additional resources. Therefore, she may be overly optimistic about that projection because of the manual calculations that were involved. In terms of the active member corrections, staff would collaborate with the Auditor-Controller's Office, because they would still be collecting contributions. She could not pinpoint exactly when the implementation would happen. Also, from what they understood from Counsel was that the Board should view these two issues separately; whether or not the Board was legally compelled to adopt; and if so, did the Board need to do adopt today. Once that decision was made, then staff could then return to the Board with an implementation plan, which described the exact steps that would need to be taken for both the retired and active members who were impacted.

Trustee Long also asked if there was anything to report out of Closed Session.

Chair Sedell stated that there was nothing to report out of the Board's Closed Session.

Ms. Dunning said an additional thing to be decided by the Board was the rate of interest to be applied to those calculations. So, in addition to their recommendation to adopt the Resolution, both she and staff recommended that the Board identify the rate of interest to be applied, because that would impact the calculations. She also wanted to clarify that the implementation of the Resolution would happen immediately for those employees who were retiring, after it was adopted. She also believed that it was said before in Open Session, that stopping the collection of overpaid contributions would take the most time, as well as refunding those overpayments back to active members.

Chair Sedell said that he understood from a previous discussion that those who were retiring currently had been given an estimate, which stated that the pension benefit did not include the non-cashable portion of the flex credit.

Ms. Webb noted that if the members had requested an estimate during this period of time, then the estimate would not have reflected the non-cashable portion of the flex credit. So, if a member were to retire right now, their benefit would include the full flex credit, and it would be too late to catch these over payments for October's payroll. But staff could catch these for the November payroll, which would be those members with retirement dates in October 2022.

Chair Sedell that asked whether VCERA's calculator online included the non-cashable portion of flex credit or not.

Ms. Webb said the calculator on the website was currently not available for either Legacy or PEPRA members because of the flex credit issue. Also, when members used the calculator, they themselves would enter the Final Average Compensation, so it did not draw from the member's actual payroll record.

Chair Sedell said that there were several different ways to approach the interest rate. They could use the Federal Reserve numbers which were extremely low compared to VCERA's investment portfolio's 10-year average or 20-year average, which they had readily accessible. However, he was not aware that the Board had to decide on the interest rate today. He asked Ms. Dunning if the interest rate had to be in the Resolution or whether the Board could determine that later.

Ms. Dunning explained that it needed to be done today, in order for the Resolution to be implemented. Also, to respond to Trustee Long's question, the interest rate needed to be reasonable and justifiable, because the Board was paying interest on contributions that were being refunded. As the Chair noted, it could be based on the member crediting rate or as high as their assumed interest

rate of return from their investment portfolio. It could also be their actual return year-over-year or an averaging of that, over a longer period. However, it should be something within that range, and it should not be 0% or above what the Board actually could have received as a return.

Trustee Hernandez-Garcia asked if there was a cap on the interest rate for the overpaid contributions.

Ms. Dunning the highest rate of return that was typically ordered to be paid by courts in litigated matters was 7% for pre-judgment interest, with 10% as the outer bounds. However, there was not a set rate under the law in this circumstance, but it was within the reasonable discretion of the Board as long as it was not arbitrary capricious and the Board's decision was based on the facts and circumstances presented, in which for some members the Board had a short-term consideration, while others there was a long-term consideration, where their contributions had been on deposit.

Trustee Grass said the only thing that would be fair was for the Board to use the Actual Rate of Return, as there was a significant cost on these funds that sat on deposit for years, and members did not have the opportunity to elect how their funds should be invested. Also, these members had paid fees just like any other investment.

Chair Sedell asked if using the actual rate of return meant they would use the yearly rate for the years the members served or did it mean the Board's actual rate of return over a period of time. What was the actual rate of return a year?

Trustee Grass said that he believed that either would be fair, at the expense of having to go back and calculate all of the members individually. Although he understood that it could be an issue, but the actual rate of return of the plan should be the very least of where their discussion began.

Ms. Webb said that staff would need to know what rate to apply, so the Board would need to determine if they wanted to do a long-term rate of return, and if so, how long that period would be.

Trustee Grass said the members would have lost the opportunity cost investment fees, and in his own opinion he probably would not have invested his contributions in the same way that Board had. So, there were a lot of additional factors involved, but he believed that at the very least, the members should be compensated according to what VCERA investment plan earned each year.

Trustee Long said that was why she was asking because in 2008 the housing market had crashed and the returns were negative and last year, the market had not done well. She felt staff should come back to the Board with a recommendation on an interest rate.

Chair Sedell noted that the Board had a Performance Report in today's agenda materials, and they could see what VCERA had received over the past 10 years, which was 7.5% and the since inception number was 7.8%, however they did not have a 20-year rate.

Trustee Goulet then noted the "since inception" date was April 1994. So, it was a 28-year period, with a rate of 7.8%.

Trustee Grass said that it was only related to Legacy employees, so he felt that the 10-year rolling average for those employees was fair, which would be 7.6% or 7.8% because that was a 10-year average over that period. There were also not many PEPRA employees who were retiring currently, so he felt it was a good place to start.

Trustee Goulet said that thought the Board should consider either the 10-year average of 7.5% or the inception date, which was a 28-year average of 7.8%.

Trustee Long asked if anyone knew how many of the employees were affected had more than 10 years of service or longer.

Ms. Webb said all of the members affected would have had a membership date prior to PEPRA, unless they were a reciprocal member, which means prior to January 1, 2013. However, given the large group of members, there was a large range of membership dates.

Trustee Long then noted that there was a lot of fluctuation in returns over those periods.

Chair Sedell said that 7.8% would probably be the highest, because any longer of a period, with the economy the way it was, that rate would most likely come down rather than go up. So, he believed that it was the best that could be hoped for considering Trustee Grass's concerns about members who may have done better by investing themselves, but those return could also have been worse.

Trustee Long asked whether the Board should consider continuing the item to the next meeting, so that they could have staff provide them with a recommended interest rate based on the performance report.

Ms. Webb explained that staff could not make a recommendation on the rate because it was purely under the Board discretion. Staff could just inform them on what their legal options were.

Trustee Long then asked why staff could not provide the Board with that recommendation.

Ms. Dunning noted that the Board had the information necessary to determine the interest rate, and the issue was a matter of the Board's exercise of its discretion. This would also apply to the calculation of overpaid benefits for purposes of doing the offset, so it applied to both sides of the calculation and reasonable minds could differ on whether it should be an actual rate or the assumed, which was often used by other retirement board, because the Board already determined the assumed rate each year. So, all of these would be reasonable, but it was exactly the type of discussion the Board should be having now in order to make a decision to go along with the implementation Resolution.

Ms. Webb said other CERL plans' implementations had already begun and she believed the assumed rate was the most commonly used by them.

Trustee Goulet asked what VCERA's current rate of return was, maybe 7%.

Chair Sedell replied Yes, 7%.

Trustee Goulet then said he believed the range the Board should consider was between 7% and 7.8% and he for one, would choose 7.8%, because it was the longest term.

Chair Sedell said that he would agree with that because it was what VCERA had made in the longest period, which he felt was reasonable considering the ups and downs of markets.

Trustee Ashby said he felt it was appropriate to go with rate since inception of 7.8% considering that they were discussing the resolution today, which was higher than the assumed rate that VCERA's has. So, he believed that in fairness, 7.8% was what they should consider.

Trustee Roberts said that he also agreed with Trustee Ashby, as most of the members who would be impacted by this would be long-term employees, who had been members for 10, 20, or 30 years of their career. Therefore, he also felt that the longest measurement period made the most sense.

Chair Sedell reiterated that none of the Board members wanted to remove the non-cashable portion of the flex credit from compensation earnable, but it was required by law and the Board wanted to

make it the least painful for the members. Therefore, they could have the 7.8% interest rate in a separate motion, or they could include it in the same motion to approve the Resolution, but it should be clear now that if the Resolution was adopted this would be the interest rate applied.

Trustee Grass believed that they should be two separate motions because while some of the trustees might not agree about the implementation, they agreed if it was to pass, the rate should be 7.8%.

Ms. Webb asked whether the interest would apply to the total contributions or compounded annually.

Chair Sedell said that it was his understanding as well. He then asked the other Board members if they had a different understanding.

Ms. Webb added that if they had it compounded annually, it would create a larger unfunded liability for the Plan.

Trustee Goulet said he would make the motion that if the Resolution were adopted, that a 7.8% interest rate would be applied to contributions.

Trustee Grass said that he believed that there was some confusion regarding the interest rate, which he believed had to be compounded annually.

Trustee Goulet said no, he did not suggest compounding the interest.

Trustee Grass replied that it needed to be compounded because it would not be fair to the employee otherwise.

Trustee Goulet said that they would have to go back to each year and calculate it.

Trustee Grass said that was why he thought the actual rate of return was sufficient. It had to be compounded, because VCERA could take the overpayment amount and multiply it by 7.8% one time.

Ms. Nemiroff said that no one had suggested using the actual rate of return the plan had earned every year, instead what was being proposed was an average rate of 7.8 percent. So, the question was, should it be simple interest that applied one-time to the total contributions, or every year compounded, similar to the way the COLA benefit rate was calculated.

Trustee Grass said again that it had to be compounded annually, otherwise the rate of return, including inflation, would be a negative number.

Ms. Webb asked if someone could explain how it would be compounded annually.

Trustee Grass explained that if they invested a hundred dollars every year, 7.8% interest would be added. Then the following year they would take 107.8 and multiply it by 1.078%, which the only way it could be done. Otherwise, they took twenty thousand, for example that had accumulated for 30 years and multiplied it by 7.8% the actual rate of return, minus inflation, CPI and everything else, the total would end up being a negative number. Therefore, it had to be compounded.

Chair Sedell asked how staff had done the calculations that were being provided to the members.

Ms. Webb explained that staff had not calculated the refunds yet. Staff had only given the members the difference in benefits based on the inclusion or exclusion of the flex credit.

Trustee Grass said if they looked at his previous example again, and where they had that 7.8% interest rate that was earned by the plan. The hundred dollars that increased to \$107.80 was exactly

what the plan earned. So, they were not giving any additional money back. He would also say that the 7.8% interest rate was probably low.

Chair Sedell said that VCERA had also earned a negative rate of return during some years.

Trustee Grass said that he was talking about an average, but if he was talking about basic economic or financial principles of compound interest that 7.8%, if they went back to inception was exactly what had been earned, including the years with negative returns, that had been compounded. So, if they were just agreeing on a 7.8% rate, compounded annually instead of a simple interest calculation, then everyone would get a fair amount in their refund, as members were not retiring with only three years of service.

Ms. Dunning said she believed compounded interest was the way it was typically applied to these sorts of refunds by other systems. So, it was compounded in the same way that Trustee Grass was recommending. It would also be helpful for the maker of the motion to clarify that the interest rate would be applied was to all calculations of Interest under the Resolution, and not just refunds and contributions, because the calculation of the offset applicable where someone has been overpaid a benefit would also include interest. Therefore, it would be helpful to note that that would be the interest rate applied to whichever calculation was being performed.

Ms. Webb noted that it was also how interest crediting was performed.

Chair Sedell asked if the interest were compounded on a year-by-year basis, would not the math come out different because the amounts involved would be different each time.

Ms. Webb said that the member accounts were credited on June 30th and December 31st of each year, in an amount equal to one half the rate of return of the U.S 10-year treasury note as quoted in the Wall Street Journal. It was then credited to those contributions on deposit six months prior using the rate of the 10-year note, and in no way would the semi-annual rate of interest credited exceed one half of the prevailing actual interest assumption rate, adopted by the Board.

Trustee Grass said that the way to make it fair would be to calculate it on a yearly basis, similar to an individual paying their mortgage, in a bunch of separate smaller payments. So, if you reduced your interest rate you could have the effect of inflating that. So, it should be calculated every year, all the contributions, multiplied by that rate of return, and compounded to the next year.

Chair Sedell said, however, if a member were to join the plan at a certain point in time, they might not get 7.5% interest, overall, because VCERA would not have earned 7.5% interest; it could be a negative percent over a period of time.

Trustee Grass again said they were discussing Legacy members because PEPRA members were not retiring yet, since those members would only have 8 years of service and the minimum was 20 and a certain age, to qualify for retirement. However, they were talking about 7.8% for all members, whether they had 11 years of service or 35.

Trustee Goulet said that he was concerned because he was not sure that VCERA plan had 7.8% calculated on a compounded basis.

Mr. Martin said that he could answer that question for Trustee Goulet. The 7.8% was compounded annually, net a fee return of the plan, over that period. Therefore, it was indeed compounded. Also, to be clear, the way NEPC calculated it was that they took one plus the return in the first year, multiplied by one, plus the return in the second year. So, they did not take the annual returns, but they

calculated the geometric average of those returns over the time period. Therefore, it was indeed compounded, and they also had the individual year-by-year number in the report.

Trustee Joe noted that VCERA's outside counsel had said that the Board should approve a rate for all the calculations not just for the refund of overpaid contributions.

Trustee Goulet agreed with Trustee Joe saying that all calculations would use the same rate if the Resolution were passed.

MOTION: If the Proposed Resolution was Adopted, the Interest to be Applied to All Calculations on Non-Cashable Flex Credit would be a Compounded Annual Interest Rate of 7.8%.

Moved by Goulet, seconded by Long

Vote: Motion carried

Yes: Grass, Goulet, Hernandez-Garcia, Joe, Long, Roberts, Sedell

No: -

Absent: Hintz

Abstain: -

Chair Sedell then said that the Board was bound by law, in regard to approving the Resolution, although he would have liked to have heard some differing legal analysis. However, they Board had not heard anything from the County or Unions that gave him faith that there was another legal opinion they could consider. So, at this point it did not seem legally defensible to continue to wait in excluding the non-cashable portion of the flex credit allowance. However, the Board knew that the County was considering options that could alleviate the issues through a negotiated process with the union's representatives, which would likely be done by the time VCERA was able to get the proposed Resolution implemented, given the implementation would most likely take at least five to six months. Therefore, he hoped that the County could have some resolution quicker than that, so that it would be less impactful to the members.

Trustee Roberts asked if the Board had been told that the decision to include or exclude the flex credit allowance for Non-PEPEA and Legacy members was wholly the responsibility of the Board of Retirement.

Ms. Dunning replied that the Courts had made that very clear, both in the California Supreme Court in Alameda and most recently at the Santa Barbara Superior Court, in the pending litigation that Retirement Boards do not grant benefits and Retirement Boards did not have the right to expand benefits beyond the statutory confines of CERL. Therefore, the Board did not have discretion to include a non-pensionable benefit in an employees retirement allowance.

Trustee Roberts acknowledged Ms. Dunning and thanked her for the explanation.

Trustee Goulet said his understanding was that case law that said that a Retirement Board also did not have the option of creating a "window" for the implementation of the Resolution.

Ms. Dunning said that he was correct, and in the legal case that was cited in the Resolution, in the City of San Diego vs. San Diego City Employees Retirement System, the Retirement Board had created a 3-month window period in order to allow their members to receive the benefit of a particular rate of service credit purchase, which was not the rate the Board determined needed to be provided under the law. Then the Court of Appeals said it that was illegal, and a window period was not

permitted in that instance. So, the retirement system then had to engage in a multi-year process of correcting all those benefits.

Sedell remarked that it would be difficult to get a motion for something that no one wanted to do.

Trustee Roberts then asked, regarding the timing, what sort of discretion did the Board have to timing of the implementation of the proposed Resolution.

Ms. Dunning explained that the timing was set forth in the proposed Resolution, such that it would comply with the Supreme Court's decision issued on July 30, 2020. So, the timing had not changed, if adopted, was that the Board would not recoup from the post-*Alameda* retirees, the amounts they had been overpaid. So, the timing recommended was today, to adopt and implement it as soon as practicable, which varied in terms of the member group, but the priority would be the retirees, who were continuing to be overpaid, and also to any new retirees from entering payroll with an incorrect benefit amount.

Chair Sedell noted for the record that the Board's duty was to administer the benefits that were allowed by law. When AB 826 was going through the legislative process, the Board could not support that legislative change, however staff worked with the County on the language in the bill, so that if passed they could avoid further legal issues in court. Therefore, the Board had done all that it could do to help AB 826 pass. Also, when the Board had removed paragraphs 3, 6 and 9 from the previously proposed Resolution regarding the flex credit, the County then went to the court, and they found that there was no dispute for the court to rule on. Then the County and the unions lobbied for AB 826, and everyone saw where that went, which was frustrating for everyone, especially the retirees and the active members, but the law said what it said, and he did not see that the Board had any other choice but to adopt the Resolution.

Trustee Grass said that he believed that the Board should honor the request of the County and all the unions by postponing the adoption of the proposed Resolution until April 1st, so that they could seek alternate options. This would be no different than when the Board had waited for Declaratory Relief or the passage of AB 826. The Board had tried over the last two years to provide additional time, so that the County and Unions could negotiate, and he believed that the County probably did not believe until now that AB 826 would not pass. Therefore, they should be given a little more time, and so adopting the proposed Resolution right now was the wrong thing to do for members, and he did not feel he could be convinced otherwise.

Trustee Joe then asked Ms. Dunning, if Trustee Grass's recommendation would create the window period that was similar to the one, that she mentioned in *City of San Diego vs. San Diego City Employees Retirement System*.

Ms. Dunning replied yes.

Trustee Grass pointed out that back to 2003 the Board believed they had the discretion to not exclude the non-cashable portion of the flex credit, so he did not see how the argument had changed today, versus 2 ½ years ago.

Ms. Dunning explained that VCERA believed they had the discretion in 2003 because the Court of Appeals said they "need not" instead of "must not" include the non-cashable portion of the flex credit, so the Board believed that it was discretionary, but it was litigated very heavily, which led to the elevated decision whether *Guelfi* footnote 6, was good law that could be relied upon or not and the Supreme Court said it was not and disapproved as to *Guelfi* footnote 6. So, it was the California Supreme Court's unanimous decision on July 30, 2020, that created the context of the "may not", or

“must not” language to include in-kind benefits in the calculation of retirement allowances. The delay on the issue was due to some reasonable efforts to seek either judicial authorization or statutory change, which would permit these payments to be included in final compensation of the benefit, and neither had been forthcoming. This was why the Board’s Fiduciary Counsel said at this point the Board was willfully creating a window period that was in violation of law.

Trustee Grass said that he believed Ms. Dunning’s pointed to exactly what he was saying, in that the Board had created this window period for the last 2 years, so there was no difference now.

Ms. Dunning explained that those two things were not the same because there had not previously been a true “window period”, in the sense that the current proposed Resolution was similar to all the other resolutions that had come to the Board with the same recommendation from staff, with the same implementation date of July 30, 2020. So, all the retirees who had retired on or after that date had their benefits impacted by this. Therefore, what staff and legal counsels had simply said about the window period was correct, although she had heard that some people did not believe it should be applied to the retirees, which she believed was wrong. However, if there were an additional window period created, then the Board would be allowing more people to be overpaid and then the question would be, did the Board have a reasonable basis not to recoup from them. Therefore, the Board would be digging further into the hole that the system finds itself in currently, of having overpaid benefits and having to address the reason for that.

Trustee Grass replied that Ms. Dunning comments were an oversimplification of the facts because a member who retired tomorrow would actually be owed a refund and the fact that the Board could reduce the benefit beginning tomorrow, with the uncertainty of when the members would be paid back. The Board had no idea when that would be, the only thing they had agreed on was the interest rate for the refund of those overpaid contributions. So, he did not think there was any difference when the Board was waiting for AB 826 to pass or not 6 months ago and waiting now for negotiations between the County and the Unions, in earnest. Therefore, he did not see the rush to adopt the proposed Resolution and he did not think that the tactic of what the counsel was saying now was creating an illegal window.

Chair Sedell remarked that the reverse of Trustee Grass’s argument could be made, because he believed the County and the union representatives who had commented today had said there were options available to them that could possibly alleviate the problem. So, in essence the members could be kept whole by those negotiations. So, whether the Board adopted the proposed Resolution today or it was postponed. There would however be pressure was on the County and the unions to get something worked out, because it would take VCERA about 6 months to get the calculations done in order to implement the Resolution. So, if that put pressure on negotiations within those 6 months and if both sides were agreeing that they would do something to prevent the members from losing any portion of their pension, then there should be no impact to the actual beneficiaries.

Trustee Grass said that it would make a difference because if an employee were to retire on November 2nd, their pension benefit would be reduced by a certain amount every month. It may not matter to him or Chair Sedell, but it was going to matter to those retirees. It could be the difference between those retirees being able to make their car payment, whether they could afford to go out to dinner, or whether they could afford health insurance premiums. It was a huge difference to them, and he felt the Board would not be doing right by those retirees if the Board did not wait to see if the matter could be resolved through those negotiations. Because they could all agree that there was something that could be done that would fix the whole problem.

Chair Sedell said that he understood what Trustee Grass was saying, but it came down to was this, was it the Board responsibility to do the “right thing” for the employees or to do the right thing according to the law.

Trustee Grass then said that the Board had been waiting to implement the complete Resolution for 2 years and asked if Chair Sedell was saying that the Board had been doing the wrong thing that whole time. No, the Board was waiting on something to happen, just like they were today.

Trustee Long asked, since the Board had taken this long, what would be the risk in waiting 5 or 6 months. How was that risk different previously and maybe the Board needed their fiduciary counsel to weigh in on that, or perhaps they needed a second opinion, because it would be coming back to the Board, as well as unions. The County had been trying to figure out a legislative solution to the issue, but the bill was vetoed. However, she had heard some of the concerns about not adopting the proposed Resolution, but she was also concerned about the effect on retirees. Therefore, would it be worth getting another opinion on the matter, who may support Ms. Dunning’s opinion or have another opinion altogether.

Chair Sedell noted that the County could have gotten a 2nd opinion from County Counsel, but did not.

Trustee Long explained that she was talking about a legal opinion from a 3rd party, because someone could question the validity of an opinion from County Counsel, because they worked for the County of Ventura. So, someone outside the situation may be preferable.

Ms. Dunning pointed out that VCERA was already in litigation over the issue with the County, and what she meant was that VCERA and the County were already in litigation over implementation of Alameda Decision, to the extent that if the Board adopted the Resolution today, the other parties in the case could certainly agree to have the Court decide the legality of the topic. So, there would be a dispute because at that point the Board would have adopted the Resolution and so it would be right for the most independent of people, which was the Judge, to decide on the issue, which could happen if the Board adopted the Resolution today, rather than having another opinion from some other attorney. The opinion would be from the Judge, and because it was the Judge’s ruling that mattered, every attorney would defer to the Judge’s decision.

Chair Sedell said that what Ms. Dunning was saying was that by adopting the Resolution today, the Board could have that issue back in front of a judge to make that decision.

Ms. Dunning added that the Board was already in court, all they would need was the agreement of the parties to reinsert it through a cross-complaint or something of that nature, which could be worked out with leave of court, but they were already there. The Board simply needed to adopt the Resolution, so that they were now implementing the law they have been advised applied and the Judge would rule on it; any of the other parties complained, and it sounded like many did, and all the unions who commented today were already parties to the litigation. So, the Judge would be prepared to rule on it if they asked her.

Chair Sedell asked what if in the time that it took the Judge to rule on that issue, the adoption was held, what would happen in that case.

Ms. Dunning replied no, the Board did not want to do that because they would have to apply the Resolution through the steps that had been described, so that they were not a continuing to overpay retirees from the outset with amounts that were excluded and deemed non-pensionable. As she understood, the Retirement Administrator said that staff could quickly work on refunding the overpaid contributions for retirees, which was something that did not need to wait. However, what would take

longer was “turning off the spigot” for active members, where the payroll had already shut down through year end, which would take necessarily longer, but it would be litigated in the meantime. So, there would be resolution in the Superior Court on the issue by that April date, but in the meantime the Board would be able, or the system would be able, to implement it and there would be a case in controversy, and they would have something that the Judge would be willing to rule on, given she was unwilling to rule when the Board had been previously unwilling to take final action.

Trustee Long asked Ms. Dunning if it less expensive to the employees to get a 2nd opinion versus going to court to get that opinion.

Ms. Dunning pointed out that it was not an issue of expense to the employees because they were not paying it directly; but it was far less expensive in her view to get a ruling from the Judge, than to deal with another six months of uncertainty. VCERA was already before the Judge and another attorney's opinion, would be just that, it would not be binding on anyone. She said that having practiced public pension law for 25 years, including in all of the cases she had mentioned, in her opinion the adoption of the proposed Resolution was the way to comply with the law at this point.

Chair Sedell said it was one avenue that the Board could follow, and obviously the County would have to agree to it, but he believed that they would to get it the matter resolved in the Court. It would also still provide the County time to work out the issue through negotiations, while VCERA was going through the implementation process, because it would still take some time to implement.

Trustee Roberts asked for the status of the Declaratory Relief.

Chair Sedell explained that since the County demurred on the issue, after the Board decided not to implement paragraph's 3, 6, and 9 in the original Resolution, the Court would not rule on it.

Ms. Dunning reminded the Board that there was a case management conference scheduled for October 31st, and she and the Board would discuss the matter in greater detail in Closed Session, but for purposes of Open Session, the Judge wanted to know what was left to be resolved in the case. The Judge had ruled in VCERA's favor, by upholding the Board's decision, with respect to the leave straddling topic and now there was a case management conference, which would be a perfect opportunity for the parties to come forward and tell the Judge that they would like an additional issue to be resolved by the Court. They could ask for an amended pleading, so they would need a Leave of Court, but she suspected the Judge would be very willing to provide a ruling, assuming that the pleadings were properly amended.

Chair Sedell noted that the County had already indicated that they would be willing, and they were already in the case. The Board already had a threat of litigation, from VCDSA as they already said they would sue VCERA if they excluded the non-cashable portion of the flex credit.

Trustee Long said that she still believed that a 2nd opinion was a lot less expensive than going to court and having all the lawyers discussing the matter, but she understood that Ms. Dunning was very knowledgeable on this issue.

Ms. Dunning said to Trustee Long that VCERA was already in the litigation, which was the point and the Meet and Confer was already scheduled for Friday, so that cost would already be incurred to add the argument to the litigation was a way to get an opinion on it. But it would be Judicial opinion as opposed to an opinion from another law firm, and they would not have to pay for it the Court was required to provide it to them.

Chair Sedell said that it would actually provide an opportunity for County Counsel and Ms. Dunning to discuss the issue.

Ms. Dunning replied yes, provided that the Board adopted the Resolution today. If the Board did not, there would be no dispute and they would be no closer to getting the issue resolved in court than they were before.

Trustee Long then asked Ms. Dunning whether she could simply ask the Judge for a ruling without Board having to approve the Resolution right now.

Ms. Dunning replied that the Judge had already said that she would not decide the issue if the Board did not adopt the Resolution.

Trustee Goulet noted that Trustee Grass had raised the issue of what the difference was between delaying adoption of the resolution now and delaying before. He believed there was a distinct difference when the Board delayed initially, because they thought they were going to go to court to get a Declaratory Relief action, but it was scuttled. Then the Board had reason to believe that AB 826 would pass, but then that did not happen. Now, the Board would be knowingly increasing the total amount of overpayments, which would then not be recouped. This was something that he felt the Board should not do.

Trustee Grass said no, the Board would be delaying the adoption of the proposed Resolution, knowing that the County would be negotiating on the issue to fix the problem.

Trustee Goulet then replied, the Resolution needs to be passed and then the County and the Unions could come up with some sort of solution to make up for loss in the retirees' pensions, as a result of the Resolution.

Trustee Grass said that there were other ways the Board could go about it, and the Board would also be incurring a great expense by bringing on the additional staff to calculate the overpayments, and they would be doing this at the same time when it could be resolved by negotiations. He thought that the most logical thing for the Board to do was to delay the adoption of the Resolution, until they knew that the negotiations would be unsuccessful, or the Opt-out Fee had been removed by the County. It would be no different that when the Board was waiting for AB 826 to pass or obtaining Declaratory Relief.

Ms. Dunning noted that the biggest problem from a fiduciary standpoint was that the Board was overpaying retirees and, as she understood it, would not be resolved at the negotiation table. However, it would not be resolved by forcing the retirement system to pay an illegal benefit, so the Board cannot pay illegal benefits. So, if the County wanted to provide a Non-Retirement Benefit that was outside the retirement system, without giving a gift to the public funds, that was their prerogative, and they could do that.

Trustee Grass said VCERA had been pretty sure for the better part of a decade that they should not have been overpaying this benefit.

Ms. Dunning said she disagreed, as she had already stated, she believed that VCERA thought it was a discretionary authority.

Trustee Roberts asked if there was a way for the Board to make the Resolution effective April 1, 2023, while still having provisions in the Resolution that fell within the law.

Ms. Dunning said that it would be considered a window period, which she had advised was unlawful.

Chair Sedell said that the Board would then be paying on the benefit, while knowing that it was unlawful, but if the Board were to adopt the proposed Resolution today, then they could hopefully get some idea of how the courts may rule on the issue. However, if the Board did not adopt it, then there would not be a dispute, and the Court had said it would not decide on it, which would also be the appropriate place for a decision on the issue.

Trustee Long asked how the Board would be creating a window period, if they had been delaying since 2020.

Chair Sedell replied because with every avenue pursued, the door had been shut. From the time that the Board wanted to get a friendly lawsuit through a Declaratory Relief action, and then when the Board was told that AB 826 was coming, and they believed there was a reasonable chance it would resolve the issue. Representative Irwin had worked very hard to try and get the legislature to pass it. Then the Governor said the law did not allow for it, and the Alameda Decision was clear. So, all of those doors had been shut continually and now what Board's Fiduciary Counsel was saying, was that they had tried everything, and the Board needed to adopt the Resolution, if they wanted to comply with the law. Although he did not like doing it any more than anyone else, they needed to comply with law. Therefore, VCERA's staff could work on the implementation of the Resolution while the County met with the associations to try and work out the issue there. Also, he had not heard any legal opinions from the County that would give the Board something to stand on, and he had also not heard any legal opinion from the unions that said the Board was not required to adopt. They had simply said they do not want the Board to adopt the Resolution. He had heard no other reasons as to why the Board did not legally have to adopt the Resolution. He was concerned that as fiduciaries, the Board was forced to do something they really did not want to do. Hopefully, a change would occur so that the court in Santa Barbara would make a decision on the matter. The County could also possibly resolve the matter quickly with the associations, which they had the ability to do, which could be a light at the end of the tunnel. However, he did not know how the Board could say they were legally in compliance with the law if they did not adopt the Resolution.

Ms. Webb pointed out that the delays for the last 2 plus years had all been legal or legislative in nature. The first was for Declaratory Relief, so they could get a Judge to rule on the issue, but she would not because there had no controversy created. Then AB 826 was a legislative solution that would have changed the law, which also did not happen. Therefore, any further delay from this point forward would not be based on waiting for a legal or legislative solution, it would simply be done at the request of the County and Unions. So, the Board wouldn't have a legal basis to delay implementation any further.

Trustee Long noted that the contracts that the County and the unions were negotiating were legal binding contracts, so would they be waiting on another legal solution to resolve the issue.

Chair Sedell said that the County and Unions could agree to change their contract at any time, if they both agreed to change it.

Ms. Dunning said that it did not change pensionability for individuals who were not employees. So, what they were discussing today was whether pension benefits for members who were currently retired, as well as the deferred members who had terminated their employment but had not yet retired. So, those individuals presumably would not be impacted by what was being negotiated between the County and unions.

Trustee Grass said he kept getting reminded of the meeting the Board in late September or early October of 2020, where the issue was initially brought up and the sky was falling. Everyone was

saying the Board would be in trouble if they did not pass paragraphs 3, 6, and 9 of the Resolution at that time. But, if the Board had passed that portion of the Resolution at that time, the portion of flex benefit that could not be received in cash would not be received now. That Resolution did not include it, so he felt that they had a tendency of panicking about the issue, when in reality it was the same issue, they had a month and a half ago. Nothing had substantially changed other than knowing that AB 826 was not on the table anymore, and the only other option left was negotiations between the County and the Unions. No one disagreed that there were things that could be done to fix the problem, but the Board continued to have these discussions, just like in September or October, over the same argument, which that the Board had to make the decision on that day to exclude everything or there was a huge problem, and people would be sued and everything would fall apart. Yet here they were 2 years later, it nothing had happened yet; he just did not see the rush to adopt the Resolution, because the argument still had not changed from a month ago and they also knew that the County and Unions would be negotiating the issue.

Chair Sedell said that however, each time previously, they thought there was some light at the end of the tunnel, but each time there was not a light at all, and now the train was coming at them.

Trustee Grass replied it benefited of the members, in getting the additional compensation from flex credit, which was still pensionable.

Trustee Sedell then said that if Trustee Grass was so confident that it could be negotiated and approved, then there should be no problem with the Board adopting the proposed Resolution, as it would be done by the time it was implemented.

Trustee Grass said that was where Chair Sedell had gotten it wrong, because members who retire on November 1st would receive a reduced benefit, so adopting the resolution was not going to fix that. The only thing the 6 months of implementation would get the members was additional notice of how many more months it would take for the retirees to get their money back, and in the meantime their pension benefits would be reduced by \$800 to \$1,000 a month.

Chair Sedell asked, would not the end result be the same or was it different.

Trustee Grass said it would be completely different. There was one thing on the table for the County and the Unions to negotiate, but if they were not successful in negotiating anything on April 2nd, the Board could then discuss implementing the Resolution, because there would indeed be no other options. To Chair Sedell's point, a few minutes ago he said he was waiting for something else, however there was nothing else. These negotiations were the only option left, and so he felt that they should respect the wishes of the County and the associations.

Chair Sedell said that something could possibly be done within a month or maybe 2 weeks. If the County and Unions had a deadline of 2 weeks, they would most likely get it done in 2 weeks, and again the implementation of the Resolution would probably take 6 months, but if the negotiations get were in 2 weeks, the Board should not delay any further.

Trustee Grass remarked that what was being recommended would result in the members being paid less, starting November 1st.

Ms. Webb said no, new retirees would have a chance to withdraw their application if they chose to.

Trustee Grass explained, so a Fireman who worked 35 years, who was beaten and bruised, should just work another year. No, he'd worked 35 years, and maybe he is incapable of working another

year. The members should not give up some of their retirement benefit because we think something might happen. It just didn't sit well with him.

Ms. Dunning said that if Trustee Grass remembered back to their discussion on October 12, 2020, the Board did take action at that time. The Board had adopted the Alameda Implementation Resolution, which was a very important action that put in place all of the steps to apply PEPRA per Alameda Decision, except that the Board had deferred on the Flex Credit issue.

Trustee Grass remarked that the Board had continued to hear the same "sky is falling" conversation since then.

Ms. Dunning said yes, because the Board was continuing to overpay benefits. The Board was continuing to overpay retiree benefits, and members who retire on November 1st were in the same group of individuals, post Alameda Decision, who should not be receiving those amounts in their retirement allowances. So, her recommendation was, as they heard several times today, was that the Board should stop kicking the can down the road. She had a Meet and Confer with counsels on the litigation on Friday. The Board already had a Case Management Conference that the Court had scheduled for Monday, October 31st. The issue could be addressed through the courts with a Leave of the Court and an agreement of the parties, but if the Board continued to kick the can down the road to April 1st, they would have a whole slew of additional retirees, who would go out the door receiving overpaid benefits, and they could possibly lose the jurisdiction of the Santa Barbara Superior Court, because the Judge was not going to wait around forever.

Trustee Grass then said that the members were not being overpaid, they were currently owed money back and the Board had no way to tell those members when they would receive a refund.

Ms. Dunning reminded Trustee Grass that the Retirement Administrator had previously said the members would get their money back very promptly once they retired.

Trustee Grass remarked, if the County provided the needed payroll information to VCERA, in a timely manner.

Ms. Webb said that was true for the Active Members, but for Retirees staff would have to continue to pay those retirees that were already retired, with an additional benefit, until staff could recalculate their benefit. At the same time staff recalculated their benefit, staff could calculate the refund amount in the method that the Board prescribed. This meant that staff would change the retirees' benefits and in quick succession, they would refund contributions to those retirees. But members who are retiring from that point forward would be paid the correct amount, because the non-cashable flex credit would be excluded looking forward. Also, if the members would like, staff could tell them what the difference would be if they chose to move forward with their retirement or not.

Ms. Dunning added she believed that Ms. Webb had said that the return of overpaid contributions to retirees would happen promptly, so whether the member retired on November 1st, and they were being paid the adjusted amount, it was what their estimate stated. Those members would receive a refund of contributions, promptly after their retirement, and anybody whose benefit was being corrected on a go forward basis, would also receive a return of any overpaid contributions, so there would be no waiting.

Ms. Webb further said because staff would not have to do any offset calculations for those members, because there would be no overpayment. Staff would just simply use the tool they already had in

place to calculate the contributions the members paid on that excluded portion and apply the interest as prescribed.

Ms. Dunning reiterated that the refund of contributions for retirees would be calculated with the adjusted benefit going forward.

Webb said that Ms. Dunning was correct, in that the correction process was done using one tool, so the new Final Average Compensation was calculated by removing the non-cashable portion of the flex credit, on a year-by-year basis. It would be the same process that staff would use to calculate the refund of contributions, and even though they would use a different tool for this, it would be done simultaneously. So, staff would be able to come up with the 2 calculations at the same time, that way staff could also provide the refund they when they calculated the new benefit.

Chair Sedell said that it seemed to him that the only legal way to be able to resolve the issue was by adopting the Resolution, and so that the Santa Barbara court could provide a ruling. He also believed that the Board could revisit the issue, after they adopted the Resolution, if needed. However, the Board should try and get the issue moving forward in the courts to receive a final decision on the issue.

Trustee Long asked why Ms. Dunning could not just provide a draft of the Resolution to the Judge and ask for her opinion on it.

Ms. Dunning said that was exactly what she had tried to do in 2020, and the County was opposed to it in theory, but because the board had not taken action, the Judge would not issue an advisory opinion.

Trustee Ashby said he thought that the Board had kicked the can down the road as far as they could. It also should not surprise anyone, given the issue was brought up in 2020, and former Supervisor Bennett had addressed the issue by saying that the members who were retiring should save the overpayment amount, because it might have to be paid back. The Board had done everything they could possibly do to protect the members' pension benefits and hopefully they had taken Mr. Bennett's advice and held on to that money, because everyone was advised that the issue was under litigation. All had hoped that it would not get to that point, but unfortunately, they were, and the Board needed to take an action and with the intent of protecting the members, as much as possible, but the Board had to follow the law. If they tried to continue to kick the can down the road for 6 more months, he was unsure how that was going to benefit anyone. It was unfortunate, because nobody wanted to have to make this decision, they had all hoped that AB 826 would pass. However, they were at a point where they had to make a decision and the Board cannot determine what is pensionable.

Chair Sedell noted that the faster the County and the Unions agreed on a solution, the faster the matter would be resolved, even if the Board adopted the Resolution.

Trustee Roberts asked if the Board had any other options. One suggestion he had heard was that flex credit be provided to employees as a cash allowance or removing the opt-out fee. He understood those options were not for the Board, but that the County had to negotiate with the labor unions. He asked if there were anything else that the Board could do to mitigate effects of excluding the non-cashable portion of the flex credit, that they had not already discussed.

Chair Sedell said it was a retirement benefit that had to be negotiated by the County.

Trustee Roberts said it impacted the retirees, so how could the Board mitigate the impact on them, as well as those who were going to retire in the next year, before any newly negotiated items went into effect.

Ms. Dunning explained that the Board was not the grantor of the benefits, and they were not able to negotiate benefits, but they were to simply administer the Plan according to the law. There were a couple of things in the proposed Resolution that were included to help mitigate the effects, such as not recouping the overpaid contributions during last 2 ½ years; but that was as far as the Board could go given that they were not the employer. The Board was the administrator and the fiduciary, who was trusted to act in a way that was prudent. So, she recommended that the Board remember that their responsibility was to comply with the law and direct staff to apply the law, per the Resolution. Then others could decide what they could or could not do address the problem, which was within their jurisdiction to determine, but not within the Board's.

Ms. Webb said-she understood Trustee Roberts to be asking what the Board could do to mitigate, which had actually been addressed in the Resolution itself. This was to not recoup the overpayments from retirees, even if VCERA had overpaid them in excess of their contributions, and also by including a generous rate of interest to refunds. These were actions that the Board could do.

Ms. Dunning remarked that Ms. Webb was correct.

Trustee Goulet said that he believed that the Board had exhausted the topic, and although he did not like doing it, he would make the motion to adopt the proposed Resolution.

Trustee Joe said that he would second the motion.

Chair Sedell said that he had one question, before they voted on the motion. He asked Ms. Dunning if they could make sure the issue was discussed in the court in Santa Barbara; otherwise, they would be back discussing it again. So, he asked Ms. Dunning if that request needed to be part of the motion.

Ms. Dunning replied that there was a Closed Session meeting scheduled so they could discuss the litigation, and afterwards it would be up to each of the parties in the litigation to proceed. The Board could not direct another party in the litigation, but certainly the desire to have this resolved through the litigation could be easily expressed, and she believed everyone had heard that already.

MOTION: Adopt the Proposed Resolution.

Moved by Goulet, seconded by Joe

Vote: Motion Failed

Yes: Goulet, Joe, Sedell

No: Grass, Hernandez-Garcia, Long, Roberts

Absent: Hintz

Abstain: -

Trustee Long then said that she would like to make the motion to bring the Resolution back to the Board in April 2023.

Trustee Grass said that he would second the motion.

Chair Sedell asked Trustee Long why there was a date in her motion.

Trustee Long said that based on what she heard from the Union groups and from the County, was that they could have their negotiations done by April 2023.

Chair Sedell said that it was her motion, and that he was just curious.

Trustee Grass noted that he believed Dr. Johnson had suggested in her letter that negotiations could be done by April 1st. So, the first business meeting after that date would presumably be the time to bring the item back to the Board.

Trustee Long then said that she would be fine with Trustee Grass's suggestion, because she would just like to provide as much time as possible for the negotiations for the employees.

MOTION: Continue the Item to the First Business Meeting in April 2023.

Moved by Long, seconded by Grass

Vote: Motion carried

Yes: Grass, Hernandez-Garcia, Long, Roberts

No: Goulet, Joe, Sedell

Absent: Hintz

Abstain: -

Chair Sedell then said that the Board would need to deal with the fact that because the Resolution was not adopted, they would not be able to ask for a ruling on the issue from the Court because there still was no dispute, which was unfortunate.

Trustee Long said that she would hope that Ms. Dunning would bring it to the Court's attention that the Board would be adopting the proposed Resolution in April 2023, if there were no changes.

Ms. Dunning said she would bring it up in court.

Chair Sedell said that the Board would now go into a Closed Session to discuss item, "VIII.B. "CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Government Code section 54956.9(a)) Name of Case: Ventura County Employees' Retirement Association v. County of Ventura, et. al, Case No.: VENCI00546574.

The Board then entered Closed Session at, 2:01 p.m.

The Board then returned from Closed Session at, 2:15 p.m.

Chair Sedell called the reconvened Open Session meeting back to order. He said that the Board had nothing to report out of Closed Session. The Board would then call roll to see which Board members were present. The Board members were all present, except for Trustee Goulet. Chair Sedell said that the Board would then continue with the agenda, since he was sure that Trustee Goulet would return to the meeting as soon as he could.

After the vote on this item, the Board returned to item, V.A., "Receive Annual Investment Presentation from Abbott Capital Management, Young Lee, Matthew Smith, and Arianna Merrill".

VIII. CLOSED SESSION

- A. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION Significant Exposure to Litigation Pursuant to Paragraph (2) of Subdivision (d) of Section 54956.9: One (1) Case: Dispute re Flex Credit Correction Resolution.
- B. CONFERENCE WITH LEGAL COUNSEL – EXISTING LITIGATION (Government Code section 54956.9(a)) Name of Case: Ventura County Employees' Retirement Association v. County of Ventura, et. al, Case No.: VENCI00546574.

IX. INFORMATIONAL

- A. SACRS Legislative Update – October 2022.

X. PUBLIC COMMENT

None.

XI. STAFF COMMENT

Ms. Webb informed the Board that there was an Ethics Training and Sexual Harassment & Discrimination courses available at the SACRS Fall Conference. So, if any trustees needed to take these courses, she recommended that they let staff know so that they could be signed up for them.

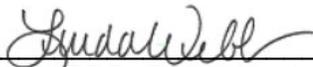
XII. BOARD MEMBER COMMENT

None.

XIII. ADJOURNMENT

The Chairman adjourned the meeting at, 3:54 p.m.

Respectfully submitted,



LINDA WEBB, Retirement Administrator

Approved,



MIKE SEDELL, Chair