

VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

BOARD OF RETIREMENT

DISABILITY MEETING

OCTOBER 4, 2021

AGENDA

PLACE: In Accordance with the Governor's Executive Order N-29-20 (3), the Members of the Board will be participating via teleconference. Pursuant to Government Code §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.

The public may listen to the Public Session and offer comments by calling: +1 669-219-2599, using Meeting ID: 859-4636-4757. Persons may also submit written comments to publiccomment@vcera.org prior to and during the Board meeting. Please include your name, agenda item, the last 4 numbers of the telephone number that will be used to call in, and your comment. Public comment emails will be read into the record or summarized if lengthy.

TIME: 9:00 a.m.

ITEM:

- | | |
|--|-----------------|
| I. <u>CALL TO ORDER</u> | Master Page No. |
| A. Roll Call. | |
| II. <u>APPROVAL OF AGENDA</u> | 1 – 2 |
| III. <u>RECEIVE AND FILE PENDING DISABILITY APPLICATION STATUS REPORT</u> | 3 – 37 |
| IV. <u>APPLICATIONS FOR DISABILITY RETIREMENT</u> | |
| A. Application for Service-connected Disability Retirement – Patterson, Ronald J.; Case No. 19-028. | |
| 1. Proposed Findings of Fact and Recommended Decision to Grant the Application for Service-connected Disability, filed by Hearing Officer Catherine Harris, dated May 31, 2021. | 38 – 52 |
| 2. Objection to Hearing Officer's Proposed Findings of Fact and Recommended Decision from Respondent, County of Ventura-Risk Management, filed by Stephen Roberson, Attorney for Respondent, dated June 9, 2021. | 53 – 69 |
| 3. Application for Service-connected Disability Retirement, filed by Applicant, dated July 22, 2019. | 70 – 75 |
| 4. Hearing Notice, dated September 15, 2021. | 76 – 77 |

**BOARD OF RETIREMENT
DISABILITY MEETING**

OCTOBER 4, 2021

**AGENDA
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V. OLD BUSINESS

- A. Proposed Resolution to Implement Provisions of AB 361, Authorizing Abbreviated Requirements for Teleconferencing During the Current State of Emergency Proclaimed by the Governor of the State of California and the Ventura County Board of Supervisors Due to the COVID-19 Pandemic.

RECOMMENDED ACTION: Adopt.

- | | |
|-------------------------------------|---------|
| 1. Staff Letter by General Counsel. | 78 – 80 |
| 2. Proposed Resolution. | 81 – 83 |
| 3. State of Emergency Declaration. | 84 – 88 |

VI. NEW BUSINESS

- A. Staff Recommendation to Provide Direction to Voting Delegate to Vote in Favor of Proposal by SACRS Legislative Committee for SACRS Sponsorship of Omnibus Legislation to Amend Certain CERL Provisions.

RECOMMENDED ACTION: Provide Direction to Voting Delegate to Vote in Favor of SACRS Legislative Committee Proposal.

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| 1. Staff Letter by General Counsel. | 89 |
| 2. SACRS Board of Directors Proposed Legislation 2022 Letter. | 90 – 103 |

VII. INFORMATIONAL

VIII. PUBLIC COMMENT

IX. STAFF COMMENT

X. BOARD MEMBER COMMENT

XI. ADJOURNMENT



October 4, 2021

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: PROPOSED RESOLUTION TO ENABLE BOARD TO HOLD MEETINGS VIA TELECONFERENCE UNDER THE PROVISIONS OF AB 361 DUE TO STATE OF EMERGENCY PROCLAIMED BY THE GOVERNOR OF THE STATE OF CALIFORNIA AND THE VENTURA COUNTY BOARD OF SUPERVISORS

Dear Board Members:

Executive Summary

As set forth in the Informational Agenda Item on the September 27, 2021, Board meeting agenda, staff is recommending that your Board adopt the accompanying Resolution to enable continued Board and Finance Committee meetings via teleconference under abbreviated teleconference rules in the Brown Act, during the currently active proclaimed State of Emergency due to the COVID-19 pandemic. Pursuant to the provisions of AB 361, signed into law by the Governor on September 16, 2021, as urgency legislation, and made applicable starting October 1, 2021, by subsequent Executive Order issued September 20, 2021, legislative bodies may conduct public meetings by teleconference only if specified findings are made the first time the body meets under the AB 361 teleconferencing rules, and then every 30 days thereafter. Accordingly, to conduct the October Board meetings by teleconference, the Board must make findings substantially in the form proposed in the accompanying Resolution.

Background:

As a legislative body under the Brown Act, your Board, including any standing committee created by the Board, is required to hold its meetings in public and within the boundaries of the County, so that all interested persons are permitted to attend and participate. The Brown Act allows for meetings to occur via teleconferencing subject to certain requirements including, but not limited to, the following: (1) the legislative body must notice each teleconference location of each member that will be participating in the public meeting; (2) that each teleconference location be accessible to the public; (3) that members of the public be allowed to address the legislative body at each teleconference location; (4) that the legislative body post an agenda at each teleconference location, and; (5) that at least a quorum of the legislative body participate from locations within the boundaries of the local agency's jurisdiction.

Executive Order No. N-29-20 suspended the above-referenced Brown Act requirements for teleconferencing during the COVID-19 pandemic, provided that notice and accessibility requirements are met, the public members are allowed to observe and address the legislative body at the meeting, and that a legislative body of a local agency have a procedure for receiving and swiftly resolving requests for reasonable accommodation for individuals with disabilities. Your Board has been properly conducting meetings via teleconference under the provisions of EO N-29-20.

On September 16, 2021, the Governor signed into law AB 361, which authorizes a local agency to use teleconferencing without complying with the above-referenced requirements under the Brown Act, when the legislative body holds a meeting during a declared state of emergency under conditions where either state or local officials have imposed or recommended measures to promote social distancing or when the legislative body determines that meeting in person would present imminent risks to the health or safety of attendees. Certain requirements for public access must also be met. As urgency legislation, AB 361 would have been effective upon adoption on September 16, 2021, but the Governor subsequently issued an Executive Order making AB 361 applicable as of October 1, 2021. Accordingly, to enable your Board to conduct this October 4, 2021, meeting by teleconference, it must invoke the provisions of AB 361 by making certain findings as described below, and take certain actions every 30 days thereafter. Adoption of this initial Resolution will enable your Board and its legislative bodies to hold meetings via teleconference through November 3, 2021, at which time the Board must reconsider and determine whether the circumstances of the COVID-19 pandemic emergency continue to warrant the holding of meetings via teleconference. The provisions added by AB 361 sunset on January 1, 2024.

Invoking AB 361:

The following are the requirements for invoking AB 361 the first time that a public agency does so:

1. There must be a “proclaimed state of emergency,” *as there is currently in that in that the Governor’s State of Emergency Declaration, issued March 4, 2020, has not been lifted, and*
2. One of the following three circumstances must exist:
 - a. State or local officials have imposed or recommended measures to promote social distancing, *which had been in place previously at the State and local level to address the COVID-19 pandemic, but which may no longer be current (note that the CDC continues to recommend social distancing of at least six feet and local masking requirements remain current);*
 - b. The meeting is held to determine, by majority vote, whether as a result of the emergency, meeting in person would present imminent risk to health or safety of attendees; or
 - c. The majority of the legislative body has voted that as a result of the emergency, meeting in person would present imminent risk to the health or safety of attendees.

The accompanying Resolution reflects the required findings in 2.c. above, namely, that as a result of the COVID-19 pandemic, meeting in person would present imminent risk to the health and safety of attendees. In the event your Board invokes AB 361 by adoption of a Resolution substantially in the form of the accompanying draft Resolution, the Board will be authorized to conduct its meetings via teleconference for 30 days, which would include the October 18 and November 1, 2021, meetings. Each 30 days thereafter, meetings may continue to be conducted via teleconference if the following requirements are met:

1. The proclaimed state of emergency must remain active; or
2. State or local officials have imposed or recommended measures to promote social distancing; and

3. Not later than 30 days after teleconferencing for the first time under the AB 361 rules, and every 30 days thereafter, the Board shall make the following findings by majority vote:

The Board has reconsidered the circumstances of emergency, and at least one of the following circumstances exist:

- a. The state of emergency continues to directly impact the ability of the members to meet safely in person; or
- b. State or local officials continue to impose or recommend measures to promote social distancing

If the Board invokes AB 361, VCERA will comply with the additional notice and participation requirements under AB 361 to ensure the public may access meetings and offer public comment. Adoption of the accompanying Resolution will enable your Board and its legislative bodies to conduct all regular and special meetings via teleconference through November 3, 2021, and staff intends to return to your Board every 30 days thereafter to enable your Board to consider renewing the teleconference option as permitted by AB 361.

I will be pleased to answer any questions at the October 4, 2021, business meeting.

RECOMMENDATION: ADOPT RESOLUTION OF THE BOARD OF RETIREMENT ACKNOWLEDGING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM DATED MARCH 4, 2020, AND PROCLAMATION OF LOCAL EMERGENCY BY THE VENTURA COUNTY HEALTH OFFICER ON MARCH 12, 2020, AND RATIFICATION THEREOF BY THE VENTURA COUNTY BOARD OF SUPERVISORS ON MARCH 17, 2020, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION FOR THE INITIAL PERIOD OF OCTOBER 4, 2021, TO NOVEMBER 3, 2021, PURSUANT TO BROWN ACT PROVISIONS.

Sincerely,



Lori A. Nemiroff
General Counsel

RESOLUTION OF THE BOARD OF RETIREMENT ACKNOWLEDGING THE PROCLAMATION OF A STATE OF EMERGENCY BY GOVERNOR NEWSOM DATED MARCH 4, 2020, AND PROCLAMATION OF A LOCAL EMERGENCY BY THE VENTURA COUNTY HEALTH OFFICER ON MARCH 12, 2020, AND RATIFICATION THEREOF BY THE VENTURA COUNTY BOARD OF SUPERVISORS ON MARCH 17, 2020, AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS OF THE LEGISLATIVE BODIES OF THE VENTURA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION FOR THE INITIAL PERIOD OF OCTOBER 4, 2021, TO NOVEMBER 3, 2021, PURSUANT TO BROWN ACT PROVISIONS.

WHEREAS, the Board of Retirement ("Retirement Board") of the Ventura County Employees' Retirement Association ("VCERA") is committed to preserving public access and encouraging participation in meetings of the Retirement Board and its legislative bodies; and

WHEREAS, all meetings of the Retirement Board and its Finance Committee (a legislative body), and any other legislative body of the Retirement Board that may be established from time to time, are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate in, and observe the Retirement Board and Finance Committee conduct their business; and

WHEREAS Government Code section 54953(e) provides for teleconferencing by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to certain conditions; and

WHEREAS, a required condition is that a state of emergency is proclaimed by the Governor pursuant to Government Code section 8625; and

WHEREAS, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the geographical boundaries within which the Retirement Board holds its meetings, caused by natural, technological, or human-caused disasters; and

WHEREAS, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body meeting in person would present imminent risks to the health and safety of attendees; and

WHEREAS, such conditions now exist for the Retirement Board and its legislative bodies, operating in the County of Ventura, specifically, a State of Emergency was proclaimed by Governor Newsom for the State of California, dated March 4, 2020, pursuant to the California Emergency Services Act (Govt. Code §8625), based on an outbreak of respiratory illness due to a novel coronavirus (a disease known as COVID-19), also referred to herein as the "COVID-19 Pandemic", and the Ventura County Health Officer issued a Declaration of Local Health Emergency on March 12, 2020, which was subsequently ratified by the Ventura County Board of Supervisors on March 17, 2020, and such State of Emergency and Local Health Emergency currently remain active; and

WHEREAS, on September 17, 2021, the Ventura County Health Officer issued an Order extending an August 20, 2021, Order requiring all individuals in the County of Ventura to wear face coverings in all indoor public settings and businesses for the control of COVID-19, and reported that Ventura County's COVID-19 case rate of 19.3 (the seven-day average case per 100,000) is still considered high community transmission by the Centers of Disease Control and Prevention ("CDC") and the California Department of Public Health and, therefore, due to the highly transmissible properties of the Delta variant of COVID-19, mostly by unvaccinated persons but also transmissible by fully-vaccinated persons, meetings in person by the Retirement Board and its legislative bodies would present imminent risk to health and safety of attendees; and

WHEREAS, the CDC currently recommends that organizations prioritize COVID-19 prevention strategies for indoor settings, and that multiple interventions, including maintaining physical distance of at least six feet and avoiding crowds, should be used concurrently to reduce the spread of disease; and

WHEREAS, the Retirement Board does hereby find that the threat of the COVID-19 Pandemic, the current local case rate indicating high community transmission, and the lack of adequate space to promote safe social distancing of a large number of attendees has caused, and will continue to cause, conditions of peril to the safety of persons at the VCERA business office location that such that is likely to be beyond the control of services, personnel, equipment, and facilities of the emergency services provided by the County of Ventura, and in making these findings, the Retirement Board acknowledges the proclamation of State of Emergency by the Governor of the State of California, and the proclamation of Local Emergency by the Ventura County Health Officer and ratification thereof by the Ventura County Board of Supervisors, as well as the Ventura County Health Officer's Order of September 17, 2021, requiring all individuals in the County to wear face coverings in all indoor public settings and businesses for the control of COVID-19, and the CDC's recommendation for maintaining physical distance and avoiding crowds; and

WHEREAS, as a consequence of the State of Emergency and Local Emergency, the Retirement Board does hereby find that conditions exist to enable it and its legislative bodies to conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that it and its legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

WHEREAS, VCERA is ensuring that the public has access to the Retirement Board and its legislative bodies meetings by posting an agenda on the website and at its business office location at least 72 hours prior to the meeting containing information for members of the public on how to access and observe the meeting via Zoom or other call-in or internet-based service option, and how to provide public comment if desired both before and during the meeting. In addition, persons requiring accommodations in accessing meetings are instructed to contact VCERA prior to the meeting.

NOW, THEREFORE, THE RETIREMENT BOARD DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Acknowledgement of Proclamation of State and Local Emergency. The Retirement Board hereby acknowledges that a State of Emergency has been proclaimed by the Governor of the State of California effective as of its issuance date of March 4, 2020, and that a Local Emergency has been proclaimed by the Ventura County Health Officer on March 12, 2020, and ratified by the Ventura County Board of Supervisors on March 17, 2020, both of which continue to exist within the geographical boundaries of the territory within which the Retirement Board and its legislative bodies hold meetings to conduct business.

Section 3. Determination Regarding Health and Safety Need to Continue Teleconferencing. The Retirement Board finds that the state of emergency directly impacts the ability of the Board, members and staff to meet safely in person, and that state or local officials continue to impose or recommend measures to promote social distancing.

Section 4. Remote Teleconference Meetings. The VCERA Retirement Administrator or designee and the Retirement Board and its legislative bodies of VCERA are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including, conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

Section 5. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective until the earlier of November 3, 2021, or such time as the Retirement Board adopts a subsequent resolution in accordance with Government Code section 54953(e)(3) to extend the time during which the legislative bodies of VCERA may continue to teleconference without compliance with section 54953(b)(3), as set forth in Section 6 herein.

Section 6. Reconsideration of Circumstances Every 30 Days. For the period of time that the State of Emergency proclaimed by the Governor of the State of California remains active, the Retirement Board may reconsider the circumstances of the emergency and make the findings as are necessary to continue to hold remote teleconference meetings as permitted by the Brown Act every 30 days following adoption of this Resolution, until the provisions for the alternate authority exercised herein sunsets by operation of law on January 1, 2024.

PASSED AND ADOPTED by the Retirement Board of VCERA this 4th day of October, 2021, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

**EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA**

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and



WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

WHEREAS it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.



IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and



notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

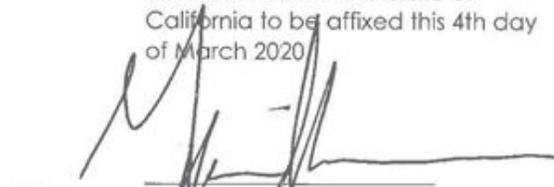


notification requirement of Civil Code section 1798.24, subdivision (j), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.
14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

I FURTHER DIRECT that as soon as hereafter possible, this proclamation be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this proclamation.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State





October 4, 2021

Board of Retirement
Ventura County Employees' Retirement Association
1190 South Victoria Avenue, Suite 200
Ventura, CA 93003

SUBJECT: STAFF RECOMMENDATION TO PROVIDE DIRECTION TO VOTING DELEGATE TO VOTE IN FAVOR OF PROPOSAL BY SACRS LEGISLATIVE COMMITTEE FOR SACRS SPONSORSHIP OF OMNIBUS LEGISLATION TO AMEND CERTAIN CERL PROVISIONS.

Dear Board Members:

As reflected in the accompanying letter addressed to the SACRS Board of Directors, the SACRS Legislative Committee recommended that SACRS sponsor omnibus legislation in 2022 to amend various sections of the County Employees Retirement Law of 1937 (CERL), which the Board approved for submittal to the SACRS membership for consideration. The SACRS membership will vote on this proposal at the SACRS Board of Directors Business Meeting on November 12, 2020, during the upcoming SACRS Fall Conference. The purpose of this agenda item is for your Board to provide direction to its voting delegate as to whether to approve the introduction of this omnibus legislation by SACRS. A summary matrix and draft bill language is also attached. In developing its proposal, the Legislative Committee sought input and review by all of the CERL systems. Staff provided input in response to the Committee's request. Staff has reviewed the final proposed omnibus legislation and recommends that your Board direct its voting delegate to vote in favor of the proposal.

RECOMMENDED ACTION: PROVIDE DIRECTION TO VOTING DELEGATE TO VOTE IN FAVOR OF THE PROPOSAL

I would be pleased to respond to questions at the October 4, 2021, Board meeting.

Sincerely,

Lori A. Nemiroff
General Counsel



September 20, 2021

RE: SACRS-Sponsored Legislation in 2022

Dear SACRS Board of Directors,

The SACRS Legislative Committee recommends that SACRS sponsor legislation in 2022 to amend various sections of the County Employees' Retirement Law of 1937 (CERL).

At its September 17, 2021 meeting, the Legislative Committee approved bill language for a CERL Omnibus Bill and recommended approval by the SACRS Board of Directors. If approved by the SACRS membership at the Fall Conference, the bill language can be introduced in January 2022 for consideration during the 2022 legislative session.

The enclosed language reflects the work of Legislative Committee members, in collaboration with system administrators, over the past year to develop non-controversial, technical, and clarifying amendments to the CERL.

A summary matrix and draft bill language are attached.

If you have questions or would like to provide additional feedback, please contact us at dnelsen@acera.org or sterne@sacounty.net.

Respectfully,

/s/

David Nelsen and Eric Stern
Co-Chairs, Legislative Committee

ATTACHMENTS

- Summary Matrix
- Draft Bill Language

As of September 2021

2022 CERL Clean-Up Bill

Issue	Gov Code	Topic	Issue/Justification
1	31452.7	Beneficiaries - Designating Estate	This amendment would allow a member to designate a corporation, trust, or estate to receive his or her last check upon death. This does not allow an estate or trust to receive ongoing payments. Note: Members who choose Option 1 already can designate an estate to receive the balance of contributions.
2	31525	Board of Supervisor approval of Board of Retirement regulations	This amendment would delete the requirement that Board of Retirement regulations must be approved by the Board of Supervisors. This language is a holdover from when CERL systems were managed by a county department, and was adopted prior to the passage on Prop.162 in 1992. Adoption of regulations is part of the BOR's duty to administer the system.
3	31641.4	Prior Service -- Military Reserve Service	This amendment would note a potential federal pre-emption issue regarding purchasing prior military reserve service. Current statute establishes that prior service purchases from another public agency must not yield a pension from that agency. However, 10 U.S.C. § 12736 provides that a period of military service may not be excluded from credit towards a civilian employment pension just because that period also counts towards reservist retirement. Thus, the question arises which statute prevails in a conflict between 10 U.S.C. § 12736 and Section 31641.4. The Ninth Circuit Court of Appeal considered that question in Cantwell v. San Mateo County, 631 F.2d 631 (9th Cir. 1980), and determined that federal law overrides Section 31641.4.
4	31646	Service Purchase for FMLA Leave	This amendment would include all leaves that are covered under the FMLA that are not due to the illness of the member.
5	31646.XX	Furloughs	This amendment would provide boards with authority to prevent temporary mandatory furloughs from impacting member benefits under specified circumstances. Similar to CalPERS statutes (see GC 20968, 20969, 20969.1, 20969.2), but granting more discretion to boards, this proposed new code section may help avoid inequities that can arise because of the timing of temporary mandatory furloughs in relation to members' planned retirements.

As of September 2021

6	31680.2	Post-Retirement Employment	This amendment would add clarifying language that nonsalaried positions and per diems do not count as double dipping for members appointed to boards and commissions under purview of a participating employer of a county system; similar to language of 7522.57 for state boards and commission.
7	31725.7 31760	Disability Retirement: Optional Allowances	This amendment would allow members to change optional allowance if subsequently granted disability retirement, regardless of when the member filed a Disability Retirement application. Currently, Section 31725.7 only allows a benefit option change for members who retired for service after filing a disability retirement application but does not provide the same ability for those who retired for service before filing an application, even though both members may subsequently be granted a disability retirement.
8	31726 31726.5	Nonservice-connected disability	This amendment restructures the sections to provide more clarity; no substantive changes. The sections on the nonservice-connected disability retirement benefit formula distinguish between those retiring on or after age 65 for general and on or after age 55 for safety versus those retiring under these ages in the same section: 31726 and 31726.5.
9	31730	Disability -- Reinstatement	This amendment addresses the scenario in which an employer does not offer to take the employee back who has been found to no longer be incapacitated. The proposed amendment would convert convert the disability retirement into service retirement without adjusting benefit (i.e. actuarial reduction). This conforms to existing practice of several systems. Note: Similar to GC 21193 in which CalPERS only reinstates if the local employer offers to take the employee back.
10	31761 31762 31763 31764	Beneficiary Designation	This amendment would insert the word "natural" in front of the phrase "person having an insurable interest in his or her life" to clarify that the optional retirement settlement death benefit cannot be paid to a fictitious person such as a trust or corporation.
11	31781	Lump Sum Death Benefit	This amendment would add language consistent with other CERL sections that provide direction on the calculation of compensation earnable and pensionable compensation when the member is on a leave of absence during the 12 months immediately preceding the member's death.

As of September 2021

12	31838.5	Concurrent Retirement: Disability	<p>Section 31838.5 prevents windfalls for members who retire for disability from one or more systems. This amendment would clarify that a CERL system must reduce a member’s allowance from that system as much as necessary so that the member does not receive a combined allowance that is “greater than the amount the member would have received had all the member’s service been with only one entity.” The statute currently refers to a pro rata reduction by each system, but some systems (like CalPERS) are not subject to section 31838.5 and do not make any reduction. This may leave the member with the windfall that section 31838.5 is designed to prevent, depending upon how a system calculates its “pro rata” reduction. This statute would make clear that the windfalls section 31838.5 is designed to prevent should always be prevented.</p>
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Issue 1: 31452.7 – Beneficiaries Designating Estate

This amendment would allow a member to designate a corporation, trust, or estate to receive his or her last check upon death. This does not allow an estate or trust to receive ongoing payments. Note: Members who choose Option 1 already can designate an estate to receive the balance of contributions.

Section 31452.7 of the Government Code is amended to read:

(a) Upon the death of any member after retirement, any retirement allowance earned but not yet paid to the member shall, notwithstanding any other provision of law, be paid to the member's designated beneficiary.

(b) Upon the death of any person receiving a survivor's allowance under this chapter, any allowance earned but not yet paid to the survivor shall, notwithstanding any other provision of law, be paid to the survivor's designated beneficiary.

(c) For purposes of this section, "beneficiary" includes, but is not limited to, a corporation, a trust, or an estate.

Issue 2: 31525 – BOR Regulations

This amendment would delete the requirement that Board of Retirement regulations must be approved by the Board of Supervisors. This language is a holdover from when CERL systems were managed by a county department, and was adopted prior to the passage on Prop. 162 in 1992. Adoption of regulations is part of the BOR's duty to administer the system.

Section 31525 of the Government Code is amended to read:

The board may make regulations not inconsistent with this chapter, **the Public Employees' Pension Reform Act of 2013, The California Pension Protection Act of 1992, and any other provisions of law applicable to county retirement systems.**

~~The regulations become effective when approved by the board of supervisors.~~

Issue 3: 31641.4 -- Prior Military Reserve Service

This amendment would note a potential federal pre-emption issue regarding purchasing prior military reserve service. Current statute establishes that prior service purchases from another public agency must not yield a pension from that agency. However, 10 U.S.C. § 12736 provides that a period of military service may not be excluded from credit towards a civilian employment pension just because that period also counts towards reservist retirement. Thus, the question arises which statute prevails in a

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*conflict between 10 U.S.C. § 12736 and Section 31641.4. The Ninth Circuit Court of Appeal considered that question in *Cantwell v. San Mateo County*, 631 F.2d 631 (9th Cir. 1980), and determined that federal law overrides Section 31641.4.*

Section 31641.4 of the Government Code is amended to read:

A member shall receive credit for employment in public service only for such service as he is not entitled to receive a pension or retirement allowance from such public agency. The service for which he elects to contribute and the fact that no pension or retirement allowance will accrue to such member by virtue of his employment in such public agency must be certified to by an officer of the public agency where he rendered such public service or must be established to the satisfaction of the board. **Nothing in this paragraph prohibits a member from receiving credit for a period of federal public service where federal law expressly permits such credit even though the member is already entitled to receive a pension or retirement allowance from that service (*Cantwell v. San Mateo County*, 631 F.2d 631 (9th Cir. 1980)).**

Issue 4: 31646 – Credit for Uncompensated Leave of Absence for Illness; Parental Leave; Conditions

This amendment would include all leaves that are covered under the FMLA that are not due to the illness of the member.

Section 31646 of the Government Code is amended to read:

(a) A member who returns to active service following an uncompensated leave of absence on account of illness may receive service credit for the period of the absence upon the payment of the contributions that the member would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(b) (1) A member who returns to active service following an uncompensated leave of absence on account of parental leave may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. For purposes of this subdivision, parental leave is defined as any time, up to one year, during which a member is granted an approved maternity or paternity leave and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is

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claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to parental leave that commences after the adoption by the board of supervisors.

(c) (1) A member who returns to active service following an uncompensated leave of absence on account of the serious illness of a family member when the absence is eligible for coverage under the Family Medical Leave Act, 29 U.S.C. section 2601 et. seq., or the California Family Rights Act, Government Code section 12945 et. seq., may receive service credit for the period of the absence upon the payment of the contributions that the member and the employer would have paid during that period, together with the interest that the contributions would have earned had they been on deposit, if the member was not absent. For purposes of this subdivision, leave on account of illness of a family member is defined as any time, up to one year, during which a member is granted an approved leave to care for a seriously ill family member and returns to employment at the end of the approved leave for a period of time at least equal to that leave. The contributions may be paid in a lump sum or may be paid on a monthly basis for a period of not more than the length of the period for which service credit is claimed. Credit shall not be received for any period of such an absence in excess of 12 consecutive months.

(2) This subdivision shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county and applies it to leave that commences after the adoption by the board of supervisors.

Issue 5: 31646.XX – Furloughs

This amendment would provide boards with authority to prevent temporary mandatory furloughs from impacting member benefits under specified circumstances. Similar to CalPERS statutes (see GC 20968, 20969, 20969.1, 20969.2), but granting more discretion to boards, this proposed new code section may help avoid inequities that can arise because of the timing of temporary mandatory furloughs in relation to members' planned retirements.

Section 31646.XX of the Government Code is added to read:

The board may grant members who are subject to a temporary mandatory furlough the same service credit and “compensation earnable” or “pensionable compensation” to which the members would have been entitled in the absence of the temporary mandatory furlough. The board may condition such grant on the receipt of additional member and/or employer contributions that the board

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determines are necessary to fund any benefits granted under this section on an actuarially sound basis.

For the purposes of this section, a “temporary mandatory furlough” refers to time during which a member is directed to be absent from work without pay for up to one quarter of the member’s normal working hours, with such reduced working hours in place for no longer than two years.

Issue 6: 31680.20 – Postretirement Employment

This amendment would add clarifying language that nonsalaried positions and per diems do not count as double dipping for members appointed to boards and commissions under purview of a participating employer of a county system; similar to language of 7522.57 for state boards and commission.

Section 31680.20 of the Government Code is added to read:

A person who is retired under this chapter may serve without reinstatement from retirement or loss or interruption of benefits under this chapter or the Public Employees’ Pension Reform Act of 2013 provided the service is on a part-time state, county, city, district, or other political subdivision board or commission. A retired person whose employment without reinstatement is authorized by this subdivision shall acquire no benefits, service credit, or retirement rights with respect to the employment. Part-time service is limited to less than 20 hours per week, and salary or stipend of the part-time service may not exceed \$60,000 annually.

Issue 7: 31725.7, 31760 – Disability Retirement: Optional Allowances

This amendment would allow members to change optional allowance if subsequently granted disability retirement, regardless of when the member filed a Disability Retirement application. Currently, Section 31725.7 only allows a benefit option change for members who retired for service after filing a disability retirement application but does not provide the same ability for those who retired for service before filing an application, even though both members may subsequently be granted a disability retirement.

Section 31725.7 of the Government Code is amended to read:

(a) At any time after filing an application for disability retirement with the board, the member may, if eligible, apply for, and the board in its discretion may grant, a service retirement allowance pending the determination of his or her entitlement to disability retirement. If he or she is found to be eligible for disability retirement, appropriate

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adjustments shall be made in his or her retirement allowance retroactive to the effective date of his or her disability retirement as provided in Section 31724.

(b) Notwithstanding subdivision (a), this section shall also apply to a member retired for service who subsequently files an application for disability retirement with the board. If he or she is found to be eligible for disability retirement, appropriate adjustments shall be made in his or her retirement allowance retroactive to the effective date of his or her disability retirement as provided in Section 31724.

~~(b)~~(c) This section shall not be construed to authorize a member to receive more than one type of retirement allowance for the same period of time nor to entitle any beneficiary to receive benefits which the beneficiary would not otherwise have been entitled to receive under the type of retirement which the member is finally determined to have been entitled. In the event a member retired for service is found not to be entitled to disability retirement he or she shall not be entitled to return to his or her job as provided in Section 31725.

~~(c)~~(d) If the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary shall be as selected by the member at the time of retirement for service. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall also be binding as to the type of allowance the member receives if the member is awarded a disability retirement.

~~(d)~~(e) Notwithstanding subdivision ~~(c)~~(d), if the retired member should die before a final determination is made concerning entitlement to disability retirement, the rights of the beneficiary may be as selected by the member at the time of retirement for service, or as if the member had selected an unmodified allowance. The optional or unmodified type of allowance selected by the member at the time of retirement for service shall not be binding as to the type of allowance the member receives if the member is awarded a disability retirement. A change to the optional or unmodified type of allowance shall be made only at the time a member is awarded a disability retirement and the change shall be retroactive to the service retirement date and benefits previously paid shall be adjusted. If a change to the optional or unmodified type of allowance is not made, the benefit shall be adjusted to reflect the differences in retirement benefits previously received. This paragraph shall only apply to members who retire on or after January 1, 1999.

Section 31760 of the Government Code is amended to read:

(a) Except as provided in subdivisions **(b) and (c)**, until the first payment of any retirement allowance is made, a member or retired member, in lieu of the retirement allowance for the member's life alone, may elect to have the actuarial equivalent of his or her retirement allowance as of the date of retirement applied to a lesser retirement

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allowance payable throughout life in accordance with one of the optional settlements specified in this article.

(b) Notwithstanding subdivision (a), a member who applies for disability and is subsequently granted a service retirement pending a determination of entitlement to disability may change the type of optional or unmodified allowance that he or she elected at the time the service retirement was granted, subject to the provisions of Section 31725.7.

(c) Notwithstanding subdivision (a), a member retired for service who applies for and is subsequently granted a disability retirement may change the type of optional or unmodified allowance that he or she elected at the time the service retirement was granted, subject to the provisions of Section 31725.7.

Issue 8: Sections 31726 and 31726.5: Nonservice-connected disability

This amendment restructures the sections to provide more clarity; no substantive changes. The sections on the nonservice-connected disability retirement benefit formula distinguish between those retiring on or after age 65 for general and on or after age 55 for safety versus those retiring under these ages in the same section: 31726 and 31726.5.

Section 31726 of the Government Code is amended to read:

(a) Upon retirement for ~~non-service~~**nonservice**-connected disability a member who has attained age 65 shall receive his or her service retirement allowance.

(b) Every member under age 65 who is retired for ~~non-service~~**nonservice**-connected disability and who is not simultaneously retired as a member on deferred retirement of the ~~State~~**Public** Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of the following:

~~(a)~~**(1)** The sum to which he or she would be entitled as service retirement; **or**

~~(b)~~**(2)** A sum which shall consist of ~~any of the following~~:

~~(1)~~**(A)** An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

~~(2)~~**(B)** If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

~~(3)~~**(C)** If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district. This paragraph

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shall only apply to a person who becomes a member of the system on or after January 1, 1988.

Section 31726.5 of the Government Code is amended to read:

(a) Upon retirement for nonservice-connected disability a safety member who has attained age 55 shall receive his or her service retirement allowance.

(b) Every safety member under age 55 who is retired for nonservice-connected disability and who is not simultaneously retired as a member on deferred retirement of the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a disability retirement allowance which shall be the greater of:

~~(a)~~**(1)** The sum to which he or she would be entitled to as service retirement; or

~~(b)~~**(2)** A sum which shall consist of:

~~(1)~~**(A)** An annuity which is the actuarial equivalent of his or her accumulated contributions at the time of his or her retirement.

~~(2)~~**(B)** If, in the opinion of the board, his or her disability is not due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on his or her part, a disability retirement pension purchased by contributions of the county or district.

~~(3)~~**(C)** If, in the opinion of the board, his or her disability is not due to conviction of a felony or criminal activity which caused or resulted in the member's disability, a disability retirement pension purchased by contributions of the county or district.

~~Paragraph 3~~**Subparagraph (C)** shall only apply to a person who becomes a member of the association on or after January 1, 1988.

Issue 9: 31730 – Disability Reinstatement

This amendment addresses the scenario in which an employer does not offer to take the employee back who has been found to no longer be incapacitated. The proposed amendment would convert convert the disability retirement into service retirement without adjusting benefit (i.e. actuarial reduction). This conforms to existing practice of several systems. Note: Similar to GC 21193 in which CalPERS only reinstates if the local employer offers to take the employee back.

Section 31730 of the Government Code is amended to read as follows:

(a) If the board determines that the beneficiary is not incapacitated, and his or her employer offers to reinstate that beneficiary, his or her retirement allowance shall be

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canceled forthwith, and he or she shall be reinstated in the county service pursuant to the regulations of the county or district for reemployment of personnel.

(b) If the board determines that the beneficiary is not incapacitated, and his or her employer does not offer to reinstate that beneficiary, notwithstanding any requirement of this chapter regarding eligibility therefor, his or her retirement allowance shall be reclassified to a service retirement in the same amount and subject to any applicable future cost of living adjustments. The optional or unmodified type of allowance selected by the beneficiary at the time of retirement for disability shall be binding as to the service retirement.

Issue 10: 31761, 31762, 31763, and 31764 – Optional Retirement Allowances:

This amendment would insert the word “natural” in front of the phrase “person having an insurable interest in his or her life” to clarify that the optional retirement settlement death benefit cannot be paid to a fictitious person such as a trust or corporation.

Sections 31761, 31762, 31763, and 31764 of the Government Code are amended to read:

31761 – Optional settlement 1 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and, if he or she dies before he or she receives in annuity payments the amount of his or her accumulated contributions at retirement, to have the balance at death paid to his or her estate or to the natural person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board.

31762 – Optional settlement 2 consists of the right to elect in writing to have a retirement allowance paid to him or her until his or her death, and thereafter to the natural person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31763 – Optional settlement 3 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death, and thereafter to have one-half of his or her retirement allowance paid to the natural person, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement.

31764 – Optional settlement 4 consists of the right to elect in writing to have a retirement allowance paid him or her until his or her death and thereafter to have other benefits as are approved by the board, upon the advice of the actuary, continued throughout the life of and paid to the natural persons, having an insurable interest in his or her life, as he or she nominates by written designation duly executed and filed with the board at the time of his or her retirement. The designation shall not, in the opinion of the board and the actuary, place any additional burden upon the retirement system.

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Issue 11: 31781 – Death Benefit; Elements

This amendment would add language consistent with other CERL sections that provide direction on the calculation of compensation earnable and pensionable compensation when the member is on a leave of absence during the 12 months immediately preceding the member's death.

Section 31781 of the Government Code is amended to read:

The death benefit shall consist of:

- (a) The member's accumulated contributions.
- (b) An amount, provided from contributions by the county or district, equal to one-twelfth of the annual compensation earnable or pensionable compensation as defined in [Section 7522.34](#), whichever is applicable, by the deceased during the 12 months immediately preceding his death, multiplied by the number of completed years of service under the system, but not to exceed 50 percent of such annual compensation. **The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence.**

Issue 12: 31838.5 – Concurrent Retirement; Disability

Section 31838.5 prevents windfalls for members who retire for disability from one or more systems. This amendment would clarify that a CERL system must reduce a member's allowance from that system as much as necessary so that the member does not receive a combined allowance that is "greater than the amount the member would have received had all the member's service been with only one entity." The statute currently refers to a pro rata reduction by each system, but some systems (like CalPERS) are not subject to section 31838.5 and do not make any reduction. This may leave the member with the windfall that section 31838.5 is designed to prevent, depending upon how a system calculates its "pro rata" reduction. This statute would make clear that the windfalls section 31838.5 is designed to prevent should always be prevented.

Section 31838.5 of the Government Code is amended to read:

No provision of this chapter shall be construed to authorize any member, credited with service in more than one entity and who is eligible for a disability allowance, whether service connected or nonservice connected to receive an amount from one county that, when combined with any amount from other counties or the Public Employees' Retirement System, results in a disability allowance greater than the amount the member would have received had all the member's service been with only one entity.

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In cases of service-connected disability allowances only, the limitation on disability allowances provided for in this section shall apply to service-connected disability allowances payable to those who, after being employed with another county or an entity within the Public Employees' Retirement System, become employed by a second public entity on or after January 1, 1984.

Each entity shall calculate its respective obligations based upon the member's service with that entity and each shall adjust its payment on a pro rata basis. **If, however, another entity does not reduce the amount it pays the member, an entity subject to this section shall reduce the allowance it pays the member by as much as necessary to ensure that the member does not receive a disability allowance greater than the amount the member would have received had all the member's service been with only one entity.**