

CHAPTER 202

An act to amend Section 31874.6 of the Government Code, relating to county employees' retirement.

[Approved by Governor July 25, 2008. Filed with
Secretary of State July 25, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 392, Ducheny. County employees' retirement: cost-of-living adjustments.

The County Employees Retirement Law of 1937 authorizes specified cost-of-living increases to be applied to allowances paid to or on account of members of county and district retirement systems. Existing law, applicable to Sonoma County, permits the board of retirement of the retirement system in Sonoma County, if approved by the county board of supervisors, to provide cost-of-living adjustments, on a prefunded basis, to certain of the monthly allowances paid by the system to or on account of members of the system, as specified.

This bill would extend the provisions described above to Imperial County.

The people of the State of California do enact as follows:

SECTION 1. Section 31874.6 of the Government Code is amended to read:

31874.6. (a) Notwithstanding any other provision of law, on an annual basis, the board of retirement may, with the approval of the county board of supervisors, grant a cost-of-living adjustment on a prefunded basis to the retirement allowances, optional death allowances, or annual death allowances payable to or on account of eligible members. The action by the board of retirement may specify a date as of which the adjustment shall be effective and, if no effective date is specified, the adjustment shall be made in allowances payable for the time commencing on the first day of the month following the action by the board of retirement or approval by the county board of supervisors, whichever is later.

(b) Before the board of retirement may grant an adjustment pursuant to this section, the total costs of the adjustment shall be determined by a qualified actuary and the board shall determine, with the advice of the actuary, that full funding of the adjustment can be provided from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(c) The adjustment provided by this section shall be payable only to those retired members, survivors, beneficiaries, or successors in interest whose accumulated loss of purchasing power equals or exceeds 20 percent as of January 1 of the year the board of retirement takes action pursuant to this section. Loss of purchasing power shall be determined by the board of retirement based on the difference between the following:

(1) The initial retirement allowance, optional death allowance, or annual death allowance as it would have been increased by the cumulative total effect of the annual changes, rounded to the nearest one-half of 1 percent, in the Consumer Price Index for All Urban Consumers for the area in which the county seat is situated.

(2) The retirement allowance, optional death allowance, or annual death allowance as actually increased by cost-of-living adjustments previously granted with respect to the allowance.

(d) A cost-of-living adjustment granted pursuant to this section shall become part of the retirement allowance, optional death allowance, or annual death allowance to be increased by any subsequent cost-of-living adjustments. The granting of an increase pursuant to this section in any particular year does not create any continuing entitlement to additional increases in subsequent years, and does not create any claim by a retired member, survivor, beneficiary, or successor in interest against the county, district, or retirement fund for any increase in any allowance paid or payable prior to the effective date of the action by the board of retirement pursuant to this section.

(e) This section shall only be applicable in the following counties:

(1) A county of the 19th class, as defined by Sections 28020 and 28040, as amended by Chapter 1204 of the Statutes of 1971.

(2) A county of the 32nd class, as defined by Sections 28020 and 28053, as amended by Chapter 1204 of the Statutes of 1971.

**IMPERIAL COUNTY
OFFICE OF COUNTY COUNSEL
MEMORANDUM**

DATE: January 19, 2011
TO: Board of Retirement
FROM: Linda S. Tucker, Deputy County Counsel
SUBJECT: **Legislative Update: 2010**

This is a brief summary of the legislation that becomes law in 2011 passed during the 2010 legislative session, affecting '37 Act counties:

1. AB 609, Administrative Costs.

The County Employees Retirement Law of 1937 ("CERL") requires a board of retirement to annually adopt a budget covering the entire expense of administration of the retirement system under certain circumstances and prohibits the expense incurred from exceeding 18/100 of 1% of the total assets of the retirement system. The CERL also prohibits expenses incurred in any year for expenditures for computer software, hardware and computer technology consulting services from exceeding the greater of 18/100 of 1% of the total assets of the retirement system plus \$1,000,000 or 23/100 of 1% of the total assets of the retirement system.

This legislation puts a ceiling on expenses for the costs of administration of the retirement system in any year from exceeding the greater of 21/100 of 1% of the accrued actuarial liability of the retirement system or \$2,000,000, subject annually to a cost-of-living adjustment. Expenditures for computer software, hardware and computer technology consulting services are excluded from this calculation.

2. AB 1354, Tax Law Conformity/HEART Act

Federal law regulates the provision of pension benefits and a retirement system providing pension benefits must meet prescribed requirements to maintain its tax qualified status. Federal law requires that a plan provide that, in the case of a participant who dies while performing qualified military service the survivors of the participant are entitled to any additional benefits provided under the plan had the participant resumed and then terminated employment on account of death. This legislation specifies that a retirement system under CERL act in accordance with the requirements of federal law.

Put simply, it posthumously reinstates a member on military leave to active service if killed during military service. Survivors of the member who dies while on active military duty receive the same benefits as if the member reinstated following military duty.

CERL requires that the board of retirement adjust the payment of benefits, including cost-of-living adjustments, to maximize the benefits available to members who are subject to certain limits of the Internal Revenue Code. This would prohibit the amount payable to a CERL retirement system member in a limitation year from exceeding the Internal Revenue Code limit as of the annuity starting date and as the limit may be increased in future years.

3. SB 1479, Reciprocity.

The CERL establishes retirement boards for the administration of benefits authorized under that law and authorizes the board to include provisions, by regulation, with respect to the administration of benefits, including the determination of when a person entering county employment becomes a member of the association. This legislation authorizes the establishment of the day that a person who enters county employment on a day other than the first day of the month to become a member no later than 12 weeks after the day the person enters county employment. This would also provide for the establishment of the day upon which a member terminates service as a day that occurs no earlier than 12 weeks prior to the member's termination from service.

This legislation is designed to clear up issues of overlapping service when a member leaves one employer for another. For instance, if a member leaves a '37 act county to go to a CalPERS county, or vice versa, and the person still has vacation time on the books, it may not be clear what the member's exit and entrance dates are. This will give systems greater flexibility in determining the dates to avoid these problems.

4. AB 1743, Placement Agents

Existing law defines the term "placement agent" to mean a person or entity hired, engaged, or retained by an external manager to raise money or investment from a public retirement system in California. The Political Reform Act of 1974 provides for the comprehensive regulation of the lobbying industry and regulating the conduct of lobbyists. The act requires lobbyists to register with the Secretary of State and to file periodic disclosure reports, and it prohibits lobbyists from engaging in certain activities, including accepting or agreeing to accept any payment contingent upon the defeat, enactment, or outcome of any proposed legislative or administrative action.

This amends the definition of "placement agent" to mean a person hired, engaged, or retained by, or serving for the benefit of or on behalf of, an external

manager, to act as a finder, solicitor, marketer, consultant, broker, or other intermediary in connection with the offer or sale of the securities, assets, or services of an external manager to a public retirement system in California for compensation, and would exclude from that definition an employee, officer, director, equity holder, partner, member, or trustee of an external manager who spends 1/3 or more of his or her time during a calendar year, managing the securities or assets owned, controlled, invested, or held by the external manager. It requires these placement agents to register as lobbyists if the county has a lobbyist registration requirement. At this time, only San Francisco, San Diego and Los Angeles have that.

5. AB 1667, Alameda County Only.

CERL authorizes, until January 1, 2011, the board of supervisors of the Counties of Solano and Santa Barbara to provide different retirement benefits for some safety member bargaining units within the safety member classification of a county retirement system.

This authorizes the Board of Supervisors of the County of Alameda, by resolution adopted by majority vote as part of any negotiated memorandum of understanding with a bargaining unit that represents safety employees, to require a safety employee of that bargaining unit or unrepresented safety employee hired after approval of the resolution, to elect in writing a permanent choice between 2 pension calculations. This also authorizes the board to provide a different formula of retirement benefits for new members of other safety bargaining units or other unrepresented safety employees hired after approval of the resolution, or to provide a different formula of safety retirement benefits for new safety members in one bargaining unit than that which is provided for new safety members of other bargaining units or new unrepresented safety members. This statute became effective July 15, 2010 as urgency legislation.

6. AB 1651, CalPERS Only.

PERS provides that members in the personal leave program shall receive credit for service that would have been credited had the employee not been in the personal leave program. This would provide that the calculations for retirement allowances for certain local safety members and persons who are employees of certain educational entities and who are subject to mandatory furloughs shall include, as credit for service and compensation, the amount of service and compensation that would have been credited and paid had the employee not been subject to mandatory furloughs on or after July 1, 2008.

7. Pension Reform By Budget

The former governor partly achieved pension reform by putting it in the budget. However, this only applies to state employees who are new hires and

does not affect counties at all. It rolls back pension benefit formulas to their pre-1999 levels. Miscellaneous (general) members will have a benefit of 2@60, now 2@55, and safety members will have 2@55, now 2.5%@55. Peace officers, firefighters, the California State University system, the legislature and judicial branches, will have 2.5@55, now 3@50. The pension is based on three highest consecutive years of salary, not one year. This also requires more analysis and oversight of the actuarial assumptions used by CalPERS in arriving at contribution rates.

cc: Geoff Holbrook, Sr. Deputy County Counsel