



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 13

MEETING DATE: October 16, 2019

SUBJECT: Legislative Update

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board give the following direction to its voting delegate for the State Association of County Retirement Systems (SACRS) Fall Business Meeting to be held on Friday, November 15:

- Approve SACRS sponsorship of SB 783, the County Employees Retirement Law (CERL) Omnibus/Cleanup bill.
- Approve SACRS sponsorship of a bill to related to nonservice-connected disability retirement and the intemperate use of alcoholic liquor or drugs.

PURPOSE

This item supports the 2019-20 Strategic Management Plan goal regarding Stakeholder Communications and Outreach to collaborate with peer pension systems and promote transparency, fairness, and compliance with laws and regulations.

DISCUSSION

There are two bills scheduled for discussion at the SACRS Fall Conference.

CERL Omnibus/Cleanup Bill

The SACRS Legislative Committee has developed non-controversial, technical, and clarifying amendments to the CERL. These amendments will help the 1937 Act systems administer benefits in accordance with changes in federal law and recent appellate court rulings, provide more flexibility to Retirement Boards, and add parity to the CERL by aligning certain statutes with CalPERS and CalSTRS laws. Specifically, the amendments:

- Consolidate the military service credit statues to better conform to federal law and ensure members who are called to duty are made whole for their time away.
- Codify the Fourth District Court of Appeal's recent ruling regarding an employer's liability and obligation to make contributions for pension benefits (*Mijares v. OCERS*, 32 Cal.App.5th 316 (2019)).

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- Allow counties to authorize members to purchase parental leave service credit, aligning with CalPERS and CalSTRS statutes and evolving law about family leave.
 - Clarify existing law regarding which benefit tier a member rejoins when reinstated to active service after an involuntary separation is overturned.
 - Allow Boards to delegate to staff the authority to finalize retirement applications and put retirees on payroll (which addresses issues raised in *Wilmot v. CCCERA*, 29 Cal.App.5th 846 (2018)).
 - Provide flexibility to Retirement Boards to accept retirement applications earlier than the current 60-day limit.
 - Allow for the lump-sum distribution of contributions when a member reaches mandatory distribution age instead of requiring a pension benefit that may be only a few dollars.

A “shell” bill has already been filed on behalf of SACRS by the Senate Committee on Labor, Public Employment and Retirement. If approved by the SACRS membership at the Fall Conference, SB 783 can be amended for consideration during the 2020 legislative session.

Intemperate Use of Alcoholic Liquor or Drugs

The second issue concerns outdated language regarding disability retirement benefits, as proposed by the Los Angeles County Employees’ Retirement Association (LACERA). Government Code Sections 31726 and 31726.5 were added to CERL in 1937 and 1951, respectively. These sections limit a member’s nonservice-connected disability retirement allowance to an annuity that is the actuarial equivalent of his accumulated contributions if the member’s disability is due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on the member’s part.

In the successive decades since 1937 and 1951, views on alcohol and drug use have evolved from a legal and moral perspective to a medical, scientific, and public health perspective—from temperance and prohibition to treatment, recovery, and counseling. The public policy underlying the limitation on nonservice-connected disability retirement allowances due to intemperate use of alcoholic liquor or drugs may no longer reflect contemporary views of alcohol and drug use. If alcohol and drug use were viewed from a disease perspective rather than a moral failure, the benefit limitation as a consequence could be considered financially punitive and discriminatory for members.

LACERA’s proposal would amend the CERL sections to remove the references to intemperate use of alcoholic liquor or drugs. The reduction in benefits due to willful misconduct or violation of law would not change.

ATTACHMENT

- SACRS Legislative Packet

Prepared by:
/S/

Eric Stern
Chief Executive Officer



2020 CERL Clean-Up/Omnibus Bill

August 28, 2019

Dear SACRS Board of Directors:

At its August 16, 2019 meeting, the Legislative Committee approved bill language for a CERL Omnibus Bill and recommended approval by the SACRS Board of Directors.

A "shell" bill – SB 783 – has been filed on behalf of SACRS by the Senate Committee on Labor, Public Employment and Retirement. If approved by the SACRS membership at the Fall Conference, SB 783 can be amended in January 2020 for consideration during the 2020 legislative session.

The enclosed language reflects the work of Legislative Committee members, in collaboration with system administrators, over the past six months to develop non-controversial, technical, and clarifying amendments to the CERL. The proposed amendments will help the 1937 Act systems administer benefits in accordance with changes in federal law and recent appellate court rulings, provide more flexibility to Retirement Boards, and add parity to the CERL by aligning certain statutes with CalPERS and CalSTRS laws. Specifically, the amendments:

- Consolidate the military service-credit statutes to better conform to federal law and ensure members who are called to duty are made whole for their time away.
- Affirm the recent *Mijares v. OCERS* appellate case regarding an employer's liability and obligation to make contributions for pension benefits.
- Allow counties to authorize members to purchase parental leave service credit, aligning with CalPERS and CalSTRS statutes and evolving law about family leave.
- Clarify existing law regarding which benefit tier a member rejoins when reinstated to active service after an involuntary separation is overturned.
- Allow Boards to delegate to staff the authority to finalize retirement applications and put retirees on payroll, in compliance with the *Wilmot vs CCCERA* ruling.
- Provide flexibility to Retirement Boards to accept retirement applications earlier than the current 60-day limit.
- Allow for the lump-sum distribution of contributions when a member reaches mandatory distribution age instead of requiring a pension benefit that may be only a few dollars.
- Update incorrect statutory references, and make other technical changes.

The bill language and a summary matrix are enclosed.

Respectfully,

Dave Nelsen and Eric Stern
Legislative Committee Co-Chairs

SB 783 -- 1937 Act Omnibus Bill

| Gov Code | Topic | Issue/Justification |
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| 31465 | Additional member contributions | Removes incorrect reference to GC 31504, which was repealed |
| 31627.1 | Additional member contributions, refunds | Removes incorrect cross reference to GC 31504; adds gender neutral language |
| 31627.2 | Additional member contributions, refunds | Removes incorrect cross reference to GC 31504; adds gender neutral language |
| 31631.5 | Member contributions, normal cost-sharing | Fixes incorrect cross reference to GC 31639 (currently 21639) |
| 31453 | Withdrawn Employer Liabilities | Affirms <i>Mijares vs. OCERS</i> ruling to emphasize Board's authority to set contributions for employers (even if they no longer have active members) to ensure sustainability of the fund. |
| 31641.45 | Refunds | Removes incorrect cross reference to 20023.1, which was repealed in 1995. |
| 31646 | Service Purchase for Uncompensated Illness | Allows members to purchase parental leave time, similar to CalPERS (GC 21013) and CalSTRS (EC 22803). Current statute does not permit purchases for unpaid absences other than for illness. This amendment adds parity for county retirement systems in an area of law and practice that has been evolving regarding parental leave. Unlike current statute that requires only member contributions for service purchases related to unpaid medical leave, this amendment requires the member to pay ALL contributions (employee and employer). This provision also require BOS approval, and applies prospectively to future parental leave to ensure compliance with PEPRA's ban on retroactive benefit increases. |
| 31649 31649.5, 31649.5, 31649.6, 31650, and 31651 | Military Leave | Consolidates military service credit statutes to conform to federal laws to ensure members who have been called to duty and return to work can be made whole for retirement purposes due to their leave of absence. These amendments do not contain policy changes, but add clarity and remove potential conflict with federal law regarding the treatment of military service purchases. |

As Approved by Legislative Committee

August 16, 2019

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| <p>31662.2 31670</p> | <p>Board Approval of Retirements</p> | <p>Delegates authority to the system administrator or other personnel to accept and process service retirement applications, approve effective retirement dates, and pay members, and directs staff to notify Board at the next public meeting. The recent Wilmot v. CCCERA appellate ruling raised a question as to when a member officially retires. The court, citing section 31670, held that a member was not retired until the Board formally approved the member's retirement application. There are various approaches that retirement boards currently use to approve, ratify, or review service retirement applications. By formally delegating the authority to staff to process service retirements, current practices can be codified to comply with section 31670 to ensure members can be paid in a timely manner.</p> |
| <p>31672, 31672.1, 31672.2, 31672.3</p> | <p>60-Day Advance Application Window</p> | <p>Allows each system to set an application window based on business needs/ability. Statute currently prohibits members from submitting applications more than 60 days before retirement, which will remain the default unless proactively changed by the Board. The 60-day rule is arbitrary and likely reflected the constraints on a manual processes. Technology solutions today can accommodate applications filed earlier, which can help facilitate retirement planning for the individual and succession planning for the employer.</p> |
| <p>31680</p> | <p>Reinstatement from Retirement</p> | <p>Reinstates to prior status members who had involuntarily termination overturned by administrative or judicial proceeding. This amendment clarifies what Tier the member should return to, if the member was separated from service during the appeal that may have stretched for long periods. Similar to CalPERS (GC 21198)</p> |
| <p>31706</p> | <p>Minimum Age Distribution</p> | <p>Conforms to IRC regulations the timing of notice for mandatory distribution by clarifying that member deadline to retire/take action is April 1 of year following the year in which the member attains age 70 ½.</p> <p>Adds language for flexibility for lump sum distribution of contributions instead of an "allowance." There are frequent situations in which a deferred member who worked for the county many years ago may have a small amount of member contributions on file. It is cumbersome and inefficient to provide an annual pension on what may amount to a few dollars, instead of providing a lump sum distribution.</p> |

As Approved by Legislative Committee

August 16, 2019

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| <p>31760.1, 31760.2, 31765, 31765.1, 31781.1, 31782.2, 31785, 31785.1, 31787, 31787.5, 31853.3</p> | <p>Optional Retirement Allowances and Death Benefits: Age 21</p> | <p>Amends CERL sections to clarify survivor benefit are to be paid up to the child's 22nd birthday as long as the child remains unmarried and enrolled full time. CERL provides for a benefit to be paid to a child over the age of 18 who is regularly enrolled as a full-time student in an accredited school. The benefit is to be paid "through the age of 21." "Through the age of 21" could mean up to the date that the child turns 21 because as of that date the child is 21 plus one day. On the other hand, it could mean up to the child's 22nd birthday. This amendment reflects the majority interpretation and practice.</p> |
| <p>31835.1</p> | <p>Concurrent Retirement: PEPRA members</p> | <p>Adds clarifying language regarding early retirement for PEPRA members who also have legacy status in another system. This section deals with concurrent retirement for reciprocal members who can retire in one system at age 50 but aren't eligible to retire in the reciprocal system until after age 50, and ensures reciprocity is maintained if they retire in the earlier eligible system. There could be a situation where a member is a Legacy member in the first system, and leaves for more than 180 days and enters the second system as a PEPRA member. If the Legacy system has not passed a resolution to lower age 55 to age 50, then the member could be subject to an age 55 requirement in one system, and an age 50 or 52 requirement in the other system. This amendments adds PEPRA reference to age 52.</p> |

Amendments to SB 783

VERSION 5

As Adopted by SACRS Legislative Committee
August 16, 2019

Additional Member Contributions; Removes Incorrect Cross Reference

Amend Section 31465:

“Additional contributions” means contributions made by members in addition to normal contributions under ~~Sections 31504 and~~ **Section** 31627.

Additional Member Contributions; Removes Incorrect Cross Reference

Amend Section 31627.1:

A member who has additional contributions under Section 31627 of the Government Code, ~~or under Section 31504 of the Government Code,~~ **Code** may, within 30 days prior to retirement, elect in writing to have all or any part of his ~~the~~ **member's** accumulated additional contributions returned to him. ~~the member.~~ **the member.** The portion returned shall not be included in the calculation of the member's annuity.

Additional Member Contributions; Removes Incorrect Cross Reference

Amend Section 31627.2:

In any county in which the provisions of Section 31676.1 apply, any member who has additional contributions under ~~Section 31504 of the Government Code, or under Section 31627 of the Government Code,~~ **Code** may elect in writing to have all or any part of his ~~the~~ **member's** accumulated additional contributions returned to him. ~~the~~ **member.** The portion returned shall not be included in the calculation of the member's annuity. The board may order payment in whole or in part withheld for a period not to exceed 90 days after receipt of such written election.

Amend Section 31631.5:

Member Contributions; Removes Incorrect Cross Reference

(a) (1) Notwithstanding any other provision of this chapter, a board of supervisors or the governing body of a district may require that members pay 50 percent of the normal cost of benefits. However, that contribution shall be no more than 14 percent above the

applicable normal rate of contribution of members established pursuant to this article for local general members, no more than 33 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 24639) **31639**) for local police officers, local firefighters, county peace officers, and no more than 37 percent above the applicable normal rate of contribution of members established pursuant to Article 6.8 (commencing with Section 31639) for all local safety members other than police officers, firefighters, and county peace officers.

(2) Before implementing any change pursuant to this subdivision for any represented employees, the public employer shall complete the good faith bargaining process as required by law, including any impasse procedures requiring mediation and factfinding. This subdivision shall become operative on January 1, 2018. This subdivision shall not apply to any bargaining unit when the members of that unit are paying at least 50 percent of the normal cost of their pension benefit or are subject to an agreement reached pursuant to paragraph (1). Applicable normal rate of contribution of members means the statutorily authorized rate applicable to the member group as the statutes read on December 31, 2012.

(b) Nothing in this section shall modify a board of supervisors' or the governing body of a district's authority under law as it existed on December 31, 2012, including any restrictions on that authority, to change the amount of member contributions.

Employer Liabilities; Affirming the Mijares vs OCERS Ruling

Amend Section 31453:

(a) An actuarial valuation shall be made within one year after the date on which any system established under this chapter becomes effective, and thereafter at intervals not to exceed three years. The valuation shall be conducted under the supervision of an actuary and shall cover the mortality, service, and compensation experience of the members and beneficiaries, and shall evaluate the assets and liabilities of the retirement fund. Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 45 days prior to the beginning of the succeeding fiscal year, recommend to the board of supervisors the changes in the rates of interest, in the rates of contributions of members, and in county and district appropriations as are necessary. With respect to the rates of interest to be credited to members and to the county or district, the board may, in its sound discretion, recommend a rate which is higher or lower than the interest assumption rate established by the actuarial survey. No adjustment shall be included in the new rates for time prior to the effective date of the revision. (b)(1) Upon the basis of the investigation, valuation, and recommendation of the actuary, the board shall, at least 45 days prior to the beginning of the succeeding fiscal year, recommend to the governing body of a district within the county system that is not governed by the board of supervisors the changes in the rates of contributions of district members and in district appropriations as are necessary. (2) This subdivision shall not be operative in any county until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable in that county.

(c) The legislature affirms the ruling of *Mijares v. Orange County Employees Retirement System* (2019) 32 Cal.App.5th 316 with respect to the board's plenary authority to recommend adjustments to county and district contributions as necessary to ensure the appropriate funding of the system, and with respect to the mandate of Section 31454 that the county and districts adjust the rates of contributions of members and appropriations in accordance with the board's recommendations. Under all circumstances, the county and districts shall each remain liable to the retirement system for their respective share of any unfunded actuarial liability of the system, as determined by the board.

Member Refunds; Removes Incorrect Cross Reference

Amend Section 31641.45:

Whenever a member is entitled to redeposit funds previously withdrawn from a retirement system and thereby becomes eligible to receive a pension or retirement allowance for the service for which he was granted public service credit as authorized in Section 31641.1, regardless of whether or not the member elects to exercise such entitlement, the member shall be refunded the amount deposited by him in accordance with Section 31641.2 plus interest which has been credited to such amount and shall receive no credit in the system for such service.

This section applies only to a member who would be eligible to receive the benefit of Section 31835 or ~~20023.1~~**20638** on making the redeposit.

Concurrent Retirement; Clarifies Age Requirement for PEPRA members

Amend Section 31835.1 to read:

Notwithstanding the provisions of Sections 31835 and 31836, a member of a retirement system established under this chapter who is eligible to retire at age 50 pursuant to Section 31672 **or Section 7522.25, or at age 52 pursuant to Section 7522.20,** or who is required to retire because of age while a member of the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, but who cannot retire concurrently from the Public Employees' Retirement System, a retirement system established under this chapter in another county, the State Teachers' Retirement System, or a retirement system of any other public agency of the state that has established reciprocity with the Public Employees' Retirement System subject to the conditions of Section 31840.2, shall be entitled to have his final compensation and service determined under Sections 31835 and 31836 as if he had retired concurrently under such other system.

Service Credit Purchases for Parental Leave

Amend 31646:

- (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 such absence upon the payment of the contributions that the member would have paid during such period, together with the interest that such 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 may not be received for any period of such 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 such absence upon the payment of the contributions that the member and the employer would have paid during such period, together with the interest that such contributions would have earned had they been on deposit, if the member was not absent. For purposes of this subsection, 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 claimed. Credit may not be received for any period of such absence in excess of 12 consecutive months.
(2) This subsection shall not be operative until the board of supervisors, by resolution adopted by majority vote, makes the provisions applicable to that county, and applies to parental leave that commences after the adoption by the board of supervisors.

Military Leave; Streamlines Military Service Credit Provisions

Government Code section 31649 should be amended to read:

- ~~(a) Any member who resigns to enter and does enter the Armed Forces of the United States on a voluntary or involuntary basis, and within 90 days after the termination of that service under honorable conditions, reenters county service, or~~
- ~~(b) Any member who obtains a leave of absence to enter and does enter the Armed Forces of the United States on a voluntary or involuntary basis, and within one year after the termination under honorable conditions of~~

~~leave of absence reenters county service, if he or she has not contributed to the retirement fund the total percentage of his or her compensation earnable due pursuant to Section 31461 or pensionable compensation as defined in Section 7522.34, whichever is applicable, due under this chapter for the entire period during which he or she was out of county service and in military service, may, not more than 90 days after his or her reentrance into county service, file with the board his or her election that no further contributions be deducted from his or her compensation except contributions due because of current service.~~

~~(c) A member who reenters county service under either (a) or (b) above may be allowed up to five years credit for vesting in the system~~

(a) This chapter shall comply with the Uniformed Services Employment and Reemployment Act of 1994 (USERRA) (38 U.S.C. § 4301 et. seq.) as amended from time to time. Any member who was absent from county or district employment for military service and is eligible for reemployment benefits pursuant to USERRA, may, as provided in USERRA, make contributions and receive service credit for the time absent.

(b) Any member who does not qualify for reemployment benefits under (a) due to the length of the military service and who returns to county or district employment within one year of being honorably discharged from the Armed Forces of the United States, shall receive credit for service for all or any part of his or her military service, if, before retirement from the county or district, he or she contributes what he or she would have paid to the fund based on his or her compensation earnable as defined by section 31461 or pensionable compensation as defined in section 7522.34, whichever is applicable, at the time of the beginning of the absence together with regular interest thereon.

(c) Nothing in this section shall affect any arrangement to pay contributions pursuant to section 31653.

Sections 31649.5, 31649.6, 31650, and 31651 should be repealed.

Board Approval/Notification of Retirement Applications; Delegation to Staff

Amend Section 31670:

(a) Retirement of a member who has met the requirements for age and service shall be made by the board pursuant to this article or pursuant to the California Public Employees' Pension Reform Act of 2013, whichever is applicable.

(b) The board may authorize the administrator or other personnel to exercise the board's power and perform its duty to retire members under this section. The administrator or other personnel shall report service

retirements to the board at the next public meeting of the board after the retirement.

Amend Section 31662.2:

- (a) Retirement of a safety member in a county subject to the provisions of 31676.1, or of Section 31695.1, if applicable, who has met the requirements for age and service shall be made by the board pursuant to this article or pursuant to the California Public Employees' Pension Reform Act of 2013, whichever is applicable.**
- (b) The board may authorize the administrator or other personnel to exercise the board's power and perform its duty to retire members under this section. The administrator or other personnel shall report service retirements to the board at the next public meeting of the board after the retirement.**

60-Day Application Window; Provides Option for Longer Period

Amend Sections 31672, 31672.1, 31672.2, 31672.3 et al:

...may be retired upon filing with the board a written application, setting forth the date upon which he or she desires his or her retirement to become effective ~~not earlier than the date the application is filed with the board and not more than 60 days after the date of filing the application.~~ **That effective retirement date shall not be:**

- (a) earlier than the date the application is filed with the board, and**
- (b) more than 60 days after the date of filing the application, or such number of days as approved by the Board.**

Reinstatement to Prior Benefit Level

Add Section 31680.10:

- (a) A person who has been retired under this chapter for service following an involuntary termination of his or her employment, and who is subsequently reinstated to that employment pursuant to an administrative or judicial proceeding that is final and not subject to appeal, shall be reinstated from retirement as if there were no intervening period of retirement. Except as provided in subdivision (b), the requirements of Sections 31680.4, 31680.5, and 31680.7 shall not apply to that reinstatement.**
- (b) The allowance received by the person during retirement shall be repaid by him or her to the retirement system from which he or she retired in accordance with the retirement system's repayment policy. Contributions shall be made for any period for which salary is awarded in the administrative or judicial proceedings in the amount that would have contributed had the member's employment not been terminated, and he or**

she shall receive credit for the period for which salary is awarded. If the person fails to repay the allowance received during retirement, then his or her contributions and allowance upon retirement subsequent to reinstatement shall be calculated under Sections 31680.5 or 31680.7, as applicable.

- (c) As used in this section, “administrative proceeding” means the process for appeal of an involuntary termination established by county or district ordinance or charter.
- (d) This section shall only apply to persons reinstated to such employment by final action on or after the effective date of this section pursuant to an administrative or judicial proceeding.

Minimum Age Distributions; Timing and Lump-Sum Option

Amend Section 31706:

Any member who has left county service and has elected to leave accumulated contributions in the retirement fund or who is deemed to have elected a deferred retirement pursuant to subdivision (b) of Section 31700 and has attained age 70 but has not yet applied for a deferred retirement allowance and who is not a reciprocal member of a retirement system established pursuant to this chapter or the Public Employees' Retirement Law shall be notified in writing by the treasurer, or other entity authorized by the board, that the member is eligible to apply for and shall begin receiving **either**; a deferred retirement allowance by April 1 of the year following the year in which the member attains age 70 ½, or, a one-time distribution of all accumulated contributions and interest. The notification shall be made at the time the deferred member attains age 70 and shall be sent by certified mail to the member's last known address, or to the member's last known employer, as shown by the records of the retirement system. If the member can be located but does not make proper application for a deferred retirement allowance with retirement to be effective by April 1 of the year following the year in which the member attains age 70 ½, the retirement system shall commence paying **either** an unmodified allowance to the member **if the member was eligible to begin receiving a deferred retirement allowance under the provisions of 31485.22, or, a one-time distribution of all accumulated contributions and interest if the member is otherwise ineligible for a deferred retirement allowance.** If the member cannot be located by April 1 of the year following the year in which the member attains age 70 ½, all of the member's accumulated contributions and interest thereon shall be deposited in, and become a part of, the current pension reserve fund of the retirement system. The board may at any time after transfer of proceeds to the reserve fund upon receipt of proper information satisfactory to it, redeposit the proceeds to the credit of the claimant, to be administered in the manner provided under this law. This section shall not apply to a member while the member is actively employed past mandatory retirement age in a retirement system established under the provisions of this chapter or the Public Employees' Retirement Law.

Optional Retirement Allowances and Survivor Benefits; Clarifies Age for Children

Amend sections 31760.1, 31760.2, 31765, 31765.1, 31781.1, 31781.2, 31785, 31785.1, 31786, 31786.1, 31787, and 31787.5:

...Notwithstanding any other provisions of this section, the benefits otherwise payable to the children of the member shall be paid to ~~such children through the age of 21~~**those children up to the 22nd birthday of the children** if such children remain unmarried and are regularly enrolled as full-time students in and accredited school as determined by the board.

And, amend section 31855.3 (c) to read:

(c) ~~Between 18 and 22 years of age,~~ **Over age 18 but under age 22,** and enrolled as a full-time student in an accredited school, as determined by the board.

SACRS 2020 Legislative Platform Submission Information

- **Title of Issue**
Nonservice-connected Disability Retirement and Intemperate Use of Alcoholic Liquor or Drugs
- **Retirement Association/Name**
Los Angeles County Employees Retirement Association
- **Contact Name**
Barry Lew, Legislative Affairs Officer
- **Contact Phone Number**
626-564-2370
- **Contact Email Address**
blew@lacera.com
- **Description of Issue**
Government Code Sections 31726 and 31726.5 were added to CERL in 1937 and 1951, respectively. These sections limit a member's nonservice-connected disability retirement allowance to an annuity that is the actuarial equivalent of his accumulated contributions if the member's disability is due to intemperate use of alcoholic liquor or drugs, willful misconduct, or violation of law on the member's part.

In the successive decades since 1937 and 1951, views on alcohol and drug use have evolved from a legal and moral perspective to a medical, scientific, and public health perspective—from temperance and prohibition to treatment, recovery, and counseling. The public policy underlying the limitation on nonservice-connected disability retirement allowances due to intemperate use of alcoholic liquor or drugs may no longer reflect contemporary views of alcohol and drug use. If alcohol and drug use were viewed from a disease perspective rather than a moral failure, the benefit limitation as a consequence would be financially punitive and discriminatory for members.
- **Recommended Solution**
Amend the CERL sections related to nonservice-connected disability retirement to remove the element related to intemperate use of alcoholic liquor or drugs.
- **Specific language changed or added to the 1937 Act and suggested code section number(s)**

Section 31726

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

Every member under age 65 who is retired for 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) The sum to which he or she would be entitled as service retirement.

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

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

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

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

Section 31726.5

Upon retirement for nonservice-connected disability a safety member who has attained age 55 shall receive his or her service retirement allowance. 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) The sum to which he or she would be entitled to as service retirement; or

(b) A sum which shall consist of:

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

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

(3) 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) shall only apply to a person who becomes a member of the association on or after January 1, 1988

Section 31728

If, in the opinion of the board, the disability is due to ~~intemperate use of alcoholic liquor or drugs, willful misconduct,~~willful misconduct or violation of law on the part of the member, and his annuity is less than two hundred forty dollars (\$240) a year, the board may pay the member his accumulated contributions in one lump sum in lieu of his annuity.

Section 31838

Every safety member under age 55 years and every other member under age 65 years who is retired for nonservice-connected disability and who is retired simultaneously under a disability retirement allowance from the Public Employees' Retirement System or a retirement system established under this chapter in another county shall receive a retirement allowance equal to the greater of the following amounts:

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

(2) A sum which shall consist of:

(a) An annuity which is the actuarial equivalent of his accumulated contributions at the time of his retirement, and

(b) If, in the opinion of the board, his disability is not due to ~~intemperate use of alcoholic liquor or drugs, willful misconduct,~~willful misconduct or violation of law on his part, a disability retirement pension purchased by contributions of the county or district, all computed as provided in Sections 31727 or 31727.2.

- **Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association/system?**

The nonservice-connected disability retirement provisions apply to all SACRS systems.

- **Do you anticipate the proposed legislation would create any major problems such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations/systems?**

As plan administrators, the other SACRS systems may not be amenable to this proposal that would substantively change the policy underlying the benefit structure for nonservice-connected disability retirements. This proposal may put a plan administrator at odds with its plan sponsor.

- **Who will support or oppose this proposed change in the law?**

SACRS systems that view the benefit limitation as financially punitive and discriminatory may support this proposal. Plan sponsors may oppose this proposal because it is a substantive change to the benefit structure of a nonservice-connected disability retirement allowance.

- **Who will be available from your association/system to testify before the Legislature?**

Barry Lew, Legislative Affairs Officer

Joe Ackler, Ackler & Associates