



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 24

MEETING DATE: August 17, 2022

SUBJECT: Legislative Issues: AB 2493 and *Alameda Corrections*

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

RECOMMENDATION

Staff recommends Board take a formal “oppose unless amended” position on Assembly Bill 2493 due to issues of administrative feasibility and authorize the Chief Executive Officer to communicate to the Legislature and Governor as appropriate.

PURPOSE

This item supports the Strategic Management Plan goal to promote transparent communication to stakeholders, and fairness and compliance with laws and regulations.

DISCUSSION

Assembly Member Philip Chen introduced AB 2493 in February 2022. Generally, this bill was intended to counteract the effects of a 2020 California Supreme Court decision that upheld a key provision of the Public Employees' Pension Reform Act of 2013 (PEPRA). Because AB 2493 is so inextricably linked to both the Court decision and PEPRA, some background on both is necessary to describe the bill.

I. Background to AB 2493

A. PEPRA

One of the key provisions of PEPRA was an amendment to the definition of “compensation earnable” in the County Employees Retirement Law of 1937 (CERL). Specifically, PEPRA narrowed the definition of “compensation earnable” by excluding from its scope certain pay items associated with pension-spiking. Gov. Code § 31461(b). Among these excluded pay items are: standby pay, pay for additional services rendered outside normal working hours, year-straddling vacation cash-in pay, cash compensation in lieu of benefits normally provided in-kind, and one-time or ad hoc payments not made on a class-wide basis.

PEPRA became effective on January 1, 2013. Immediately thereafter, labor organizations around the state filed suit, challenging the constitutionality of the newly amended Section 31461 as applied to legacy members (members who began county employment prior to 2013).

B. 2020 California Supreme Court Decision

On July 30, 2020, the California Supreme Court issued a landmark decision rejecting the various constitutional challenges to Section 31461. *Alameda County Deputy Sheriff's Assoc. et al., v. Alameda County Employees' Retirement Assn.*, 9 Cal.5th 1032 (2020) ("*Alameda*"). Specifically, the Court held that the PEPRA amendments to Section 31461 are constitutional and not in violation of the vested rights of legacy members. The Court further held that the amendments to Section 31461 must be implemented even if contrary to the terms of pre-existing settlement agreements.

C. Alameda Corrections Ordered by Retirement Boards

While the constitutional challenges to PEPRA were pending in court, and before the California Supreme Court had ruled, many county systems (including SCERS) made the decision to abide by the pre-existing settlement agreements and refrain from implementing the Section 31461 exclusions. Consequently, these systems continued to include certain pay items in compensation earnable that were arguably disallowed under PEPRA. But once the Supreme Court issued a definitive ruling upholding Section 31461, these systems had to take steps to undo what turned out to be disapproved position. Specifically, these systems had to commence mass retroactive and prospective corrections to put themselves and their members in the position they would have been in had the system rigorously implemented PEPRA from the outset. These correction efforts came to be known as "*Alameda* corrections."

SCERS' *Alameda* corrections are typical. In September 2020, this Board issued an Order calling for various categories of pay items to be excluded from the "compensation earnable" of all members that retired, or will retire, after January 1, 2013. The Board's Order also called for prospective and retroactive corrections to the benefits of those affected members, as well as prospective and retroactive corrections to contributions from those members, in light of those new exclusions.

More than half of the 20 CERL retirement systems are now undertaking *Alameda* corrections, including Contra Costa, Kern, Los Angeles, Mendocino, Merced, Orange, Sacramento, San Bernardino, San Joaquin, Santa Barbara, Stanislaus, and Ventura. In total, an estimated 22,000 members are affected by these ongoing corrections.

SCERS initiated its correction effort following the Board action in September 2020, with staff working diligently on processing corrections to a significant portion of the membership – more than 4,800 active and deferred members and nearly 2,000 retired members. While payroll records dating to 2013 were being gathered and evaluated, staff immediately began excluding the *Alameda* elements from new retirement applications. Sacramento County also updated its payroll system to cease collecting retirement contributions on newly excluded pay elements.

The complexity of the effort to retroactively correct pay records and recalculate pensions has been time-consuming and extensive. Two years after the court ruling, SCERS is now in the position to send out contribution-refund notices to active and deferred members this month, in August 2022, and is targeting October 2022 to send notices to retirees with detailed pension adjustment information.

II. AB 2493

In February 2022, Assembly Member Chen introduced AB 2493. In introducing the bill, Mr. Chen cited a story of a recently retired Orange County fire captain who was told by the Orange County Employees' Retirement system that, due to *Alameda*, his standby time would be excluded from his final compensation. As a result, OCERS would claw back from him \$10,000 to \$20,000 in overpaid benefits and also substantially reduce his benefits going forward. According to Mr. Chen, AB 2493 is intended to help safety employees and retirees who became subject to such clawbacks and benefit reductions in the aftermath of the *Alameda* decision.

Fundamentally, AB 2493 seeks to accomplish this by shifting the cost of such retroactive and prospective benefit reductions from employees/retirees to their county employers. Assuming certain conditions are met establishing innocent reliance by the employees/retirees, AB 2493 would assign the following rights and responsibilities to the parties in a disallowance scenario:

- The system must reduce the active or retired employee's benefits going forward to reflect the pay item disallowance;
- If a retiree has already received benefit payments stemming from disallowed pay items, they may keep those over-payments (i.e., the retiree would not be subject to clawbacks from the system);
- The employer must pay to the system -- through a direct payment, and not unfunded actuarial accrued liability -- the amount of such overpayments;
- The employer must pay to the retiree a "penalty" equal to 20% of the present value of the lost benefits going forward; and
- The system is to treat any employee and employer contributions made on the disallowed pay after January 1, 2013 as a credit against future contributions owed by the employer. (There is, however, ambiguity in this regard, as will be detailed below).

On June 30, 2022, AB 2493 underwent a significant amendment. Under that amendment, it appears AB 2493 would apply only in future disallowance scenarios and would not interfere with *Alameda* corrections already in progress (although, again, there is significant ambiguity in this regard).

III. Analysis

Staff recommends the Board take an “oppose unless amended” position on AB 2493 due to issues of administrative feasibility. As currently drafted, AB 2493 contains serious ambiguities and omissions that would render the law uncertain and non-administrable if enacted. The primary issues are as follows:

- *Impact on Alameda Corrections Already in Progress:* AB 2493 requires systems to make disallowance-related contribution and benefit corrections in a way that is dramatically different from the *Alameda* corrections already taking place around the state. *Alameda* corrections are already in progress in over half of the 20 CERL systems (including SCERS), affecting more than 20,000 active and retired members. Requiring these systems to halt and redo the corrections at this point would be enormously burdensome and expensive, and would likely introduce calculation errors to the detriment of members. And although the author apparently attempted to address this issue via the June 30 amendment, the amendment (through inadvertence or otherwise) did not go far enough. Currently, AB 2493 specifies that it would have no impact on *Alameda* corrections already in progress for active employees, but does not contain a similar provision concerning retired employees. This raises the prospect that, if AB 2493 is enacted, systems with *Alameda* corrections already underway would have to stop and restart a *subset* of those corrections to comply with the new law. **AB 2493 should be amended to clarify that it would not interfere *any* *Alameda* corrections already in progress, whether for active employees or and retired employees.**
- *Treatment of Member Contribution Overpayments for Active Employees:* Currently, AB 2493 is ambiguous as to how member contributions made on disallowed pay items should be treated with respect to active employees. During the amendment process, an apparent editing error was introduced into proposed Government Code section 31541.2(c)(1)(A). As a result, the bill is now ambiguous as to whether the system is to refund member over-contributions to the member directly, or to credit the employer who is then charged with refunding the employee. Tax counsel has advised systems that only the former is permissible under federal tax law. **AB 2493 should be amended to clarify that, with respect to active employees, the system shall (1) credit employer contribution overpayments against future contributions owed by the employer, and (2) refund employee contribution over-payments directly to the employee from fund assets, in a method to be determined by the system.**
- *Treatment of Member Contribution Overpayments for Retired Employees:* Similarly, AB 2493 is ambiguous as to how member contributions made on disallowed pay items should be treated with respect to retired employees. Currently, proposed Government Code section 31541.2(c)(1)(A) calls for the system to credit over-contributions – whether made by employers or members – for the benefit of the employer alone. In other words, proposed Government Code section 31541.2(c)(1)(A) makes no allowance

for the system to return member over-contributions directly to the retiree, as is required by federal tax law. **AB 2493 should be amended to clarify that, with respect to retired employees, the system may refund employee over-contributions directly to the employee from fund assets, in a method to be determined by the system.**

- *Actuarial Discretion in Reconciling Employer Contributions:* Currently, AB 2493 simply states that contributions should be credited against future contributions to benefit of employers. However, one of the lessons of the *Alameda* correction process is that system actuaries do not necessarily recommend that systems provide “dollar for dollar” refunds; rather, systems will “true-up” any differences in the annual actuarial valuation process. **AB 2493 should be amended to state clearly that any crediting of employer contributions to the benefit of the employer should be performed as determined by the system’s actuary.**

To be clear, Staff’s recommendation does not require the Board to express an opinion on the fundamental policy choices underlying AB 2493 (e.g., shifting the cost of PEPRA-mandated benefit reductions from employees/retirees to county employers). Though the SCERS Board generally refrains from expressing opinions on the wisdom of state-level policy proposals, it is also true that, as an administrative body, this Board has rarefied expertise on matters of county retirement system administration, as well as a responsibility to guard against threats to system stability. As such, it is legitimate for the Board to voice its concerns if proposed legislation threatens the practical administrability of the system, or contains serious ambiguities that expose the system to litigation. That is the problem presented by AB 2493.

IV. Conclusion

For the foregoing reasons, Staff recommends the Board take a formal “oppose unless amended” position on Assembly Bill 2493. In addition, Staff recommends the Board authorize the Chief Executive Officer to communicate its position to stakeholders. Finally, Staff recommends that, if no amendments to AB 2493 are made, the Chief Executive Officer may communicate to the Governor’s Office the Board’s formal recommendation to veto the bill.

ATTACHMENTS

- Board Order
- Text of Assembly Bill 2493 (last amended June 30, 2022)

Prepared by:

/S/

Eric Stern
Chief Executive Officer



Retirement Board Order

Sacramento County Employees' Retirement System

Before the Board of Retirement
August 17, 2022

AGENDA ITEM:

Legislative Issues: AB 2493 and *Alameda* Corrections

THE BOARD OF RETIREMENT hereby accepts the recommendation of staff to take a formal “oppose unless amended” position on Assembly Bill 2493 due to issues of administrative feasibility and authorize the Chief Executive Officer to communicate to the Legislature and Governor as appropriate.

I HEREBY CERTIFY that the above order was passed and adopted on August 17, 2022 by the following vote of the Board of Retirement, to wit:

AYES:

NOES:

ABSENT:

ABSTAIN:

ALTERNATES (Present but not voting):

Board President

Eric Stern
Chief Executive Officer and
Board Secretary

AMENDED IN SENATE JUNE 30, 2022

AMENDED IN ASSEMBLY APRIL 5, 2022

AMENDED IN ASSEMBLY MARCH 24, 2022

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 2493

Introduced by Assembly Member Chen

February 17, 2022

An act to ~~add to~~ *add* Section 31541.2 to the Government Code, relating to county employees' retirement.

LEGISLATIVE COUNSEL'S DIGEST

AB 2493, as amended, Chen. County employees' retirement: disallowed compensation: benefit adjustments.

(1) Existing law, the California Public Employees' Pension Reform Act of 2013 (PEPRA), generally requires a public retirement system, as defined, to modify its plan or plans to comply with the act. PEPRA, among other things, establishes new defined benefit formulas and caps on pensionable compensation.

The County Employees Retirement Law of 1937 (CERL) authorizes counties to establish retirement systems pursuant to its provisions in order to provide pension benefits to their employees. CERL generally vests management of each retirement system in a board of retirement. CERL authorizes a board of retirement to correct errors in the calculation of a retired member's monthly allowances or other benefits under CERL in certain circumstances, including if the member caused their final compensation to be improperly increased or otherwise overstated at the time of ~~retirement~~ *retirement*, and the system applied that overstated

amount as the basis for calculating the member's monthly retirement allowance or benefits under CERL, subject to certain limitations.

The Public Employees' Retirement Law (PERL) also authorizes its board of administration to adjust retirement payments due to errors or omissions, including for cases in which the retirement systems that the benefits of a member or annuitant are, or would be, based on disallowed compensation that conflicts with PEPR and other specified laws and is thus impermissible.

~~This bill would similarly authorize a county retirement system to adjust retirement payments based on disallowed compensation for sworn peace officers and firefighters of that system. The bill would provide that if the retirement system determines that the compensation reported for a sworn peace officer or firefighter of the system is disallowed compensation, as defined, the system would require the county employer or agency to discontinue reporting the disallowed compensation. The bill would apply this to determinations made on or after July 30, 2020, if an appeal has been filed and the applicable member, retired member, survivor, or beneficiary has not exhausted their administrative or legal remedies.~~ *require a retirement system established under CERL, upon determining that the compensation reported for a sworn peace officer or firefighter is disallowed compensation, to require the employer, as defined, to discontinue reporting the disallowed compensation.* The bill would require, for an active sworn peace officer or firefighter, ~~that all contributions~~ *the retirement system to credit all contributions* made on the disallowed compensation ~~be credited~~ against future contributions to the benefit of the employer or agency that reported the disallowed compensation, and *return* any contribution paid by, or on behalf of, that member, ~~be returned~~ to the member by the employer or agency, ~~as specified.~~ *that reported the disallowed compensation, except in certain circumstances in which a system has already initiated recalculating compensation.* The bill would ~~require,~~ *require the system,* for a retired sworn peace officer or firefighter, survivor, or beneficiary whose final compensation was predicated upon the disallowed compensation, ~~that contributions made on the disallowed compensation be credited against future contributions to the benefit of the employer or agency that reported the disallowed compensation and would require the system to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation.~~ *to credit the contributions made on the disallowed compensation against future contributions, to the benefit of the employer that reported the*

disallowed compensation, and to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation. The bill would specify establish other conditions required to be satisfied with respect to a retired sworn peace officer or firefighter, survivor, or beneficiary—whose when final compensation was predicated upon disallowed compensation, including, among others, requiring a specified payment of a penalty to be made by the employer or agency that reported contributions on the disallowed compensation. compensation to the retired member, survivor, or beneficiary, as appropriate. The bill would authorize a retirement system that has initiated a process prior to July 1, 2022, to permanently adjust the benefit of the affected retired member, survivor, or beneficiary to reflect the exclusion of the disallowed compensation to use that system in lieu of specified provisions that the bill would enact. The bill would also require certain information regarding the relevant retired member, survivor, or beneficiary needed for purposes of these provisions to be kept confidential by the recipient.

The bill would authorize an employer to submit to a retirement system for review a compensation item proposed to be included in an agreement, as specified, on and after January 1, 2022, that is intended to form the basis of a pension benefit calculation and would require the system to provide guidance on the matter. The bill would prescribe a process in this regard. The bill would specify that it does not affect or otherwise alter a party's right to appeal any determination regarding disallowed compensation made by the system after July 30, 2022.

(2) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

(3) *The bill would specify that its provisions are not to be interpreted to alter certain existing laws, including PEPRRA and the holding in Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032.*

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

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

1 SECTION 1. Section 31541.2 is added to the Government
2 Code, to read:

3 31541.2. (a) The board of retirement or board of supervisors,
4 as authorized pursuant to this chapter, may enter into any
5 agreements as may be necessary and appropriate to carry out the
6 provisions of this section.

7 (b) For purposes of this section, ~~“disallowed compensation”~~ *the*
8 *following definitions apply:*

9 (1) *“Agreement” means a memorandum of understanding or*
10 *collective bargaining agreement.*

11 (2) *“Alameda” means the Supreme Court case of Alameda*
12 *County Deputy Sheriff’s Association v. Alameda County*
13 *Employees’ Retirement Association (2020) 9 Cal.5th 1032 or its*
14 *holding.*

15 (3) *“Disallowed compensation.” means compensation reported*
16 *for a sworn peace officer or firefighter of the retirement system*
17 *that the system subsequently determines is not in compliance with*
18 ~~*the California Public Employees’ Pension Reform Act of 2013*~~
19 ~~*(Article 4 (commencing with Section 7522) of Chapter 21 of*~~
20 ~~*Division 7 of Title 1), PEPR, Alameda, Section 31461, or the*~~
21 ~~*system’s administrative regulations of the retirement system,*~~
22 ~~*regulations,*~~ through no fault of the sworn peace officer or
23 firefighter.

24 (4) *“Employer” means the appropriate applicable county,*
25 *agency, or district standing in relationship between the employee*
26 *and the system.*

27 (5) *“PEPRA” means the California Public Employees’ Pension*
28 *Reform Act of 2013 (Article 4 (commencing with Section 7522) of*
29 *Chapter 21 of Division 7 of Title 1).*

30 (6) *“System” means a retirement association or system*
31 *established by this act.*

32 (c) ~~If the retirement system determines that the compensation~~
33 ~~reported for a sworn peace officer or firefighter of the system is~~
34 ~~disallowed compensation, the system it shall require the county~~
35 ~~employer or agency to discontinue reporting the disallowed~~
36 ~~compensation. This section shall also apply to determinations made~~
37 ~~on or after July 30, 2020, if an appeal has been filed and the sworn~~
38 ~~peace officer or firefighter, the retired sworn peace officer or~~

1 firefighter, survivor, or beneficiary has not exhausted their
2 administrative or legal remedies.

3 (1) (A) In the case of an active sworn peace officer or firefighter,
4 *the system shall credit* all contributions made on the disallowed
5 compensation ~~shall be credited~~ against future contributions to the
6 benefit of the employer ~~or agency~~ that reported the disallowed
7 compensation, and *shall return* any contribution paid by, or on
8 behalf of, that member, ~~shall be returned~~ to the member by the
9 employer ~~or agency~~ that reported the disallowed ~~compensation~~.
10 *compensation, except as provided by subparagraph (B).*

11 (B) *A system that has initiated a process prior to July 1, 2022,*
12 *to recalculate an active sworn peace officer or firefighter's*
13 *reportable compensation to exclude disallowed compensation and*
14 *return contributions, either directly to the member, indirectly*
15 *through the employer, or by some other reasonable manner, may*
16 *continue to use that process provided that it is consistent with*
17 *PEPRA as it read on July 1, 2022, and with Alameda.*

18 (2) In the case of a retired sworn peace officer or firefighter,
19 survivor, or beneficiary whose final compensation at the time of
20 retirement was predicated upon the disallowed compensation, the
21 ~~contributions made on the disallowed compensation shall be~~
22 ~~credited against future contributions, to the benefit of the employer~~
23 ~~or agency that reported the disallowed compensation and the~~
24 ~~system shall permanently adjust the benefit of the affected retired~~
25 ~~member, survivor, or beneficiary to reflect the exclusion of the~~
26 ~~disallowed compensation.~~ *system shall credit the contributions*
27 *made on the disallowed compensation against future contributions,*
28 *to the benefit of the employer that reported the disallowed*
29 *compensation, and the system shall permanently adjust the benefit*
30 *of the affected retired member, survivor, or beneficiary to reflect*
31 *the exclusion of the disallowed compensation.*

32 (3) (A) In the case of a retired sworn peace officer or firefighter,
33 survivor, or beneficiary whose final compensation at the time of
34 retirement was predicated upon the disallowed compensation as
35 described in paragraph (2), the repayment and notice requirements
36 described in this paragraph and paragraph (4) shall apply only if
37 all of the following conditions are met:

38 (i) ~~The compensation was reported to the system and~~
39 ~~contributions were made on that compensation while the sworn~~
40 ~~peace officer or firefighter was actively employed.~~

1 ~~(ii) The compensation was agreed to in a memorandum of~~
2 ~~understanding or collective bargaining agreement between the~~
3 ~~employer and the recognized employee organization as~~
4 ~~compensation for pension purposes and the employer and the~~
5 ~~recognized employee organization did not knowingly agree to~~
6 ~~compensation that was disallowed.~~

7 ~~(iii) The determination by the system that compensation was~~
8 ~~disallowed was made after the date of retirement.~~

9 *(i) The employer reported the compensation to the system and*
10 *made contributions on that compensation while the sworn peace*
11 *officer or firefighter was actively employed for at least three years*
12 *prior to the member's final compensation.*

13 *(ii) The system determined after the date of retirement that the*
14 *compensation was disallowed.*

15 ~~(iv)~~

16 *(iii) The sworn peace officer or firefighter was not aware that*
17 *the compensation was disallowed at the time it was reported; the*
18 *employer reported it.*

19 ~~(B) If the conditions of subparagraph (A) are met, the employer~~
20 ~~or agency that reported contributions on the disallowed~~
21 ~~compensation shall do all of the following:~~

22 *(B) If the disallowed compensation meets the conditions of*
23 *subparagraph (A), the employer that reported contributions on it*
24 *shall do all of the following:*

25 *(i) Pay to the system, as a direct payment, the full cost of any*
26 *overpayment of the prior paid benefit made to an affected retired*
27 *member, survivor, or beneficiary resulting from the disallowed*
28 *compensation.*

29 ~~(ii) Pay a penalty, as described in clause (iii), equal to 20 percent~~
30 ~~of the amount calculated as a lump sum of the actuarial equivalent~~
31 ~~present value representing the difference between the monthly~~
32 ~~allowance that was based on the disallowed compensation and the~~
33 ~~adjusted monthly allowance calculated pursuant to paragraph (2)~~
34 ~~for the duration that allowance is projected to be paid by the system~~
35 ~~to the retired member, survivor, or beneficiary.~~

36 ~~(iii) One hundred percent of the penalty to be paid under clause~~
37 ~~(ii) shall be paid by the employer or agency as restitution to the~~
38 ~~affected retired member, survivor, or beneficiary who was impacted~~
39 ~~by disallowed compensation.~~

1 (ii) *Pay to the affected retired member, survivor, or beneficiary,*
2 *as appropriate, 20 percent of the amount calculated by the system*
3 *representing the actuarial equivalent present value of the difference*
4 *between the monthly allowance that was predicated on the*
5 *disallowed compensation and the adjusted monthly allowance*
6 *calculated pursuant to paragraph (2) for the duration the system*
7 *projects to pay that allowance to the retired member, survivor, or*
8 *beneficiary. The employer shall begin payment within six months*
9 *of notice from the system as prescribed in paragraph (4) and may*
10 *have up to three years to complete the payment.*

11 (4) The system shall provide a *written* notice to the employer
12 ~~or agency~~ that reported contributions on the disallowed
13 compensation and to the affected retired member, survivor, or
14 beneficiary, including, at a minimum, all of the following:

15 (A) ~~The amount of the overpayment to be paid by the employer~~
16 ~~or agency overpayment amount that the employer shall pay to the~~
17 system as described in subparagraph (B) of paragraph (3).

18 (B) The actuarial equivalent present value ~~owed~~ *that the*
19 *employer owes* to the retired member, survivor, or beneficiary as
20 described in clause (ii) of subparagraph (B) of paragraph (3), if
21 applicable.

22 (C) Written disclosure of the ~~employer or agency's~~ *employer's*
23 obligations to the retired member, survivor, or beneficiary pursuant
24 to this section.

25 (5) *In lieu of the process described in paragraphs (3) and (4),*
26 *a system that has initiated a process prior to July 1, 2022, to*
27 *permanently adjust the benefit of the affected retired member,*
28 *survivor, or beneficiary to reflect the exclusion of the disallowed*
29 *compensation pursuant to paragraph (2) may continue to use that*
30 *process provided that it is consistent with PEPRA as it read on*
31 *July 1, 2022, and with Alameda.*

32 ~~(5) The~~
33 (6) *Upon the employer's request, the system shall, upon request,*
34 *shall provide the employer or agency with contact information*
35 *data in its possession of a relevant retired member, survivor, or*
36 *beneficiary in order for the employer or agency to fulfill their*
37 *obligations to that retired member, survivor, or beneficiary pursuant*
38 *to this section. The recipient of this contact information data shall*
39 *keep it confidential.*

1 ~~(d) (1) The employer or agency, as applicable, may submit to~~
2 ~~the system for review an additional compensation item that is~~
3 ~~proposed to be included, or is contained, in a memorandum of~~
4 ~~understanding adopted, or a collective bargaining agreement~~
5 ~~entered into, on and after January 1, 2022, that is intended to form~~
6 ~~the basis of a pension benefit calculation, in order for the system~~
7 ~~to review consistency of the proposal with the California Public~~
8 ~~Employees' Pension Reform Act of 2013 (Article 4 (commencing~~
9 ~~with Section 7522) of Chapter 21 of Division 7 of Title 1), Section~~
10 ~~31461, the retirement system, and the administrative regulations~~
11 ~~of the system.~~

12 *(d) (1) An employer may submit to the system for review an*
13 *additional compensation item that a party to a proposed agreement*
14 *requests be included, contained, adopted, or a entered into that*
15 *agreement, on and after January 1, 2022, that is intended to form*
16 *the basis of a pension benefit calculation, in order for the system*
17 *to review consistency of the proposal with PEPR, Alameda,*
18 *Section 31461, and the system's administrative regulations.*

19 (2) A submission to the system for review under paragraph (1)
20 shall include ~~only the compensation item language and a~~
21 ~~description of how it meets the criteria listed in subdivision (a) of~~
22 ~~Section 571 or subdivision (b) of Section 571.1 of Title 2 of the~~
23 ~~California Code of Regulations, along with any other all supporting~~
24 ~~documents or requirements the system deems necessary to complete~~
25 ~~its review.~~

26 (3) The system shall provide guidance regarding the submission
27 within 90 days of the receipt of all information required to make
28 a review.

29 (e) The system ~~shall~~ *may* periodically publish a notice of the
30 proposed compensation language submitted to the system pursuant
31 to this section for review and the guidance ~~provided by the system.~~
32 *it provided.*

33 (f) This section does not alter or abrogate ~~any responsibility of~~
34 ~~the retirement system, an employer, or an agency an employer's~~
35 ~~responsibility~~ to meet and confer in good faith with the employee
36 organization regarding the impact of the disallowed compensation
37 or the effect of any disallowed compensation on the rights of the
38 employees and the obligations of the employer to its employees,
39 including any employees who, due to the passage of time and
40 promotion, may have become exempt from inclusion in a

1 bargaining unit, but whose benefit was the product of collective
2 bargaining.

3 (g) This section does not affect or otherwise alter a party's right
4 to appeal any determination regarding disallowed compensation
5 made by the ~~system~~. *system after July 30, 2020.*

6 SEC. 2. The Legislature finds and declares that Section 1 of
7 this act, which adds Section 31541.2 to the Government Code,
8 imposes a limitation on the public's right of access to the meetings
9 of public bodies or the writings of public officials and agencies
10 within the meaning of Section 3 of Article I of the California
11 Constitution. Pursuant to that constitutional provision, the
12 Legislature makes the following findings to demonstrate the interest
13 protected by this limitation and the need for protecting that interest:

14 In order to appropriately maintain the current confidentiality of
15 personal contact information held by a county retirement system
16 regarding retired members of the system, and their survivors and
17 beneficiaries, it is necessary to limit access to this information if
18 it is provided to other public entities for purposes of Section
19 31541.2 of the Government Code.

20 *SEC. 3. This act shall not be interpreted to alter the*
21 *Legislature's intent in enacting the California Public Employees'*
22 *Pension Reform Act of 2013 (Article 4 (commencing with Section*
23 *7522) of Chapter 21 of Division 7 of Title 1) of, and Section 31461*
24 *of, the Government Code, to alter a retirement system's*
25 *corresponding implementing administrative regulations, or to alter*
26 *the holding in Alameda County Deputy Sheriff's Association v.*
27 *Alameda County Employees' Retirement Association (2020) 9*
28 *Cal.5th 1032. Rather, the Legislature intends this act to be*
29 *consistent, not in conflict, with those laws, regulations, and the*
30 *Alameda holding.*

O