

Date: March 21, 2018
To: Board of Retirement
From: James Wilbanks, Ph.D., Retirement Administrator
Subject: Potential 2019 Legislative Proposals

Background

At the June 2017 meeting, the Board gave direction that it wanted to pursue two possible pieces of legislation in the 2019 California legislative session. The first piece of potential legislation regards adding a member to the Board to serve as an alternate for the Trustees appointed by the Board of Supervisors. The second piece of potential legislation regards the issue of the appropriate region on which a system should base the measurement of its cost of living adjustments (COLA).

To ensure efficient use of staff time and other resources, this item is presented for discussion so that the Board may understand the issues and options available and make preliminary decisions regarding the proposed legislative requests. The remainder of this section describes the legislative process while the subsequent sections discuss each potential legislative issue and presents recommendations to the Board regarding each issue.

Legislative Process

The June 2017 discussion was prompted by a memo from the State Association of County Retirement Systems (SACRS) Legislative Committee regarding timelines for consideration of 2018 Legislative Proposals. The Board directed to pursue legislation in 2019 as there was not sufficient time to prepare the proposals for consideration to be included in the SACRS 2018 Legislative Platform.

The Board decided to pursue inclusion of the MCERA legislative proposals in the SACRS 2019 Legislative Platform. Inclusion in the platform would provide the additional weight of support of the entire SACRS membership as well as the advantage of SACRS Advocates, Michael Robson and Trent Smith, working to advance the legislative proposals. If the SACRS membership does not include MCERA legislative proposals in the SACRS 2019 Legislative Platform, the Board would need to determine whether it wanted to pursue the legislation independently and direct potentially substantial resources to such an effort.

If the Board is successful in getting the MCERA legislative proposals included in the SACRS 2019 Legislative Platform, the SACRS Legislative Committee and Legislative Advocates will then assist in the various stages of the legislative process including: identifying bill sponsor(s), bill drafting, liaising with committee chairs and members, committee hearings, committee bill substitutes, liaising with Assembly and Senate members, floor hearings, conference committee hearings, conference committee bill substitutes, liaising with executive staff and gubernatorial review all while keeping the SACRS membership informed of the progress of the proposals.

Appointed Alternate Member Proposal

Current Statutory Language

There are currently two County Employees Retirement Laws (CERL or '37 Act) code sections that allow for an alternate appointed Board member, §31520.12 specifically for Contra Costa County and §31520.13 specifically for Ventura County. Those statutes are included below for your reference and review.



Board of Retirement Memo

Re: Potential 2019 Legislative Proposals Continued

§31520.12. Counties of the ninth class; appointment of alternate members; voting rights; compensation; term

(a) Notwithstanding Section 31520.1, and subject to the limitations of subdivision (c), in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662), the board of supervisors may, by resolution adopted by majority vote, appoint an alternate member for the fourth, fifth, sixth, and ninth members. The term of office of the alternate member shall run concurrently with the term of office of the ninth member. The alternate member shall vote as a member of the board only in the event the fourth, fifth, sixth, or ninth member is absent from a board meeting for any cause. If there is a vacancy with respect to the fourth, fifth, sixth, or ninth member, the alternate member shall fill that vacancy until a successor qualifies.

(b) The alternate member for the fourth, fifth, sixth, or ninth member shall be entitled to the same compensation as the fourth, fifth, sixth, or ninth member for attending a meeting, pursuant to Section 31521, whether or not the fourth, fifth, sixth, or ninth member attends the meeting.

(c) If the board of supervisors appoints a supervisor as the fourth, fifth, sixth, or ninth member, an alternate member appointed pursuant to subdivision (a) may not serve as an alternate for that supervisor member unless service by an alternate member for an appointed supervisor member is approved by the majority of the electors in the county.

(d) This section shall apply only to a county of the ninth class, as defined in Sections 28020 and 28030.

§31520.13. Counties of the 13th class; appointment of alternate members; term; voting rights; compensation

(a) Notwithstanding Section 31520.1, in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662), the board of supervisors may, by resolution adopted by majority vote, appoint an alternate member for the fourth, fifth, sixth, and ninth members. The term of office of the alternate member shall run concurrently with the term of office of the ninth member. The alternate member shall vote as a member of the board only in the event the fourth, fifth, sixth, or ninth member is absent from a board meeting for any cause. If there is a vacancy with respect to the fourth, fifth, sixth, or ninth member, the alternate member shall fill that vacancy until a successor qualifies.

(b) The alternate member for the fourth, fifth, sixth, or ninth member shall be entitled to the same compensation as the fourth, fifth, sixth, or ninth member for attending a meeting, pursuant to Section 31521, whether or not the fourth, fifth, sixth, or ninth member attends the meeting.

(c) This section shall apply only to a county of the 13th class, as defined in Sections 28020 and 28034.

The only significant difference between the two sections is paragraph (c) of §31520.12 which precludes the alternate appointed member from voting in place of a Supervisor appointed to the Board of Retirement unless a measure authorizing such is passed by a county wide vote.

California Constitutional Issues

Proposition 162, adopted by the voters of California in 1992, added language to the State Constitution limiting the ability of the Legislature to make changes to Boards of Retirement. The relevant section reads:

CALIFORNIA CONSTITUTION, ARTICLE XVI PUBLIC FINANCE SECTION 17 (In Part)

(f) With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a



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majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.

In 2002, the California Attorney General was asked to issue an opinion on the following question: “May the board of retirement of a county employees retirement association appoint an alternate for the eighth office on the board, which office is held by a retired member elected by the retired members of the association, without the approval of the jurisdiction’s electorate?” State Attorney General published official opinions are entitled to great weight by a court, but they are not binding precedents like a court decision. That is, such opinions provide guidance absent a court precedent, but they can be easily overturned or dismissed by a Court.

In response to the question, the Attorney General published an opinion. The following language is excerpted from that opinion while the full opinion is attached for reference:

California Attorney General Opinion 86 Ops. Ca. Atty. Gen. 25 (In Part)

The issue to be resolved is whether the appointment and election of an alternate as authorized in section 31520.5 constitutes a change in “the number, terms, and method of selection or removal of members of the retirement board” for purposes of the Constitution. If so, the change must first be “ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.” (Cal. Const., art. XVI, § 17, subd. (f).)

We do not believe that section 31520.5 constitutes a modification in the selection of retirement board members. The number of persons on the board remains at nine. Only one person may hold the office of the eighth member both before and after the enactment of section 31520.5. An alternate is not a “member” of the board for purposes of the constitutional voter approval requirement since there cannot be two eighth members. While an alternate on a board may have certain rights and meet certain qualifications (see, e.g., *Candlestick Properties, Inc. v. San Francisco Bay Conservation etc. Com.* (1970) 11 Cal.App.3d 557, 567-569; 82 Ops.Cal.Atty.Gen. 29 (1999); 78 Ops.Cal.Atty.Gen. 285 (1995)), we believe the constitutional voter approval requirement only applies to the number, terms, and method of selection of the regular members of a retirement board.

.....

CONCLUSION

The board of retirement of a county employees retirement association may appoint an alternate for the eighth office on the board, which office is held by a retired member elected by the retired members of the association, without the approval of the jurisdiction’s electorate.

The California Constitution specifies that any changes to “the number, terms, and method of selection or removal of members of the retirement board” enacted by legislation after July 1, 1992 must be approved by a vote of the electorate in the jurisdiction. However, the Attorney General’s opinion supports the argument that adding an alternate to a retirement board does not constitute such a change.

Legal opinions differ regarding whether adding an appointed alternate requires a vote of the electorate. Of the two counties in which legislation added an appointed alternate to the board of retirement after July 1, 1991, one county pursued a vote of the electorate and the other did not. Given this background, there is no clear answer whether a vote is required to add an appointed alternate to the MCERA Board, but doing so without a vote of the electorate entails risks of a potential legal challenge.



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Policy Question: Appropriate Sponsoring Entity

There also is a policy question that need be asked and answered regarding the appointed alternate proposal. Is the MCERA Board or the appointing authority the appropriate entity to propose this legislation?

One could easily argue that this proposal serves the interest of the plan sponsor, rather than the retirement association or the retirement board. This line of argument would lead to the conclusion that this legislative request should be pursued by the plan sponsor rather than the board of retirement.

It could also be argued that a board of retirement requesting the addition of an appointed alternate member serves the interests of the plan sponsor rather than the interests of the plan members. Of course, arguments could also be made that the appointed alternate does serve the interests of plan members, the association and the board of retirement.

These arguments have no simple and clear answer to guide the Board. They are presented here to assist the Board in making an informed decision regarding this potential legislation, with all available information on the pertinent issues and concerns regarding the potential legislation.

Appointed Alternate Member Proposal Recommendations

Due to the issues outlined above, I recommend the Board carefully deliberate this topic before committing additional resources to the effort. Further, because of the potential legal issues involved with this proposal, I would recommend the Board be fully committed to the proposed legislation before committing to a course of action and the pursuit of legislation to authorize the addition of an appointed alternate member to the Board.

If the Board elects to pursue this legislation, based on experience in prior legislative sessions, I recommend the Board include language in the proposal to make the appointed alternate optional, rather than a requirement. I would also recommend inclusion of language so that the appointed alternate position only becomes effective if resolutions are adopted by both the Board of Retirement and the Board of Supervisors so that both Boards have a voice in the decision to implement the position.

If the Board wishes to proceed with this legislative request, in light of other considerations I would propose the following language for this proposal. The underlining indicates the addition of new language to the CERL, while strikethrough would indicate a deletion of existing language in the CERL. If the Board prefers to include language similar to paragraph (c) of §31520.12, that could easily be included at the direction of the Board.

§31520.14. Appointment of alternate members; term; voting rights; compensation

(a) Notwithstanding Section 31520.1, in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662), the board of supervisors may appoint an alternate member for the fourth, fifth, sixth, and ninth members. The term of office of the alternate member shall run concurrently with the term of office of the ninth member. The alternate member shall vote as a member of the board only in the event the fourth, fifth, sixth, or ninth member is absent from a board meeting for any cause. If there is a vacancy with respect to the fourth, fifth, sixth, or ninth member, the alternate member shall fill that vacancy until a successor qualifies.

(b) The alternate member for the fourth, fifth, sixth, or ninth member shall be entitled to the same compensation as the fourth, fifth, sixth, or ninth member for attending a meeting, pursuant to Section 31521, whether or not the fourth, fifth, sixth, or ninth member attends the meeting.

(c) This section shall not become operative in any county until such time as the board of retirement shall, by resolution adopted by a majority vote, approve the addition of the alternate appointed member and the board of supervisors elects, by resolution adopted by majority vote, making it operative in the county.



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Cost of Living Adjustment Proposal

History and Current Practice

MCERA plan documents added a cost of living adjustment (COLA) for retirement benefits beginning in 1971. From that time until 2016, the Board based the COLA on the Bureau of Labor Statistics (BLS) Consumer Price Index for All Urban Consumers (CPI-U) in the San Francisco-Oakland-San Jose region, commonly referred to as the Bay Area. Mendocino County borders the 10 county region that makes up the Bay Area, but is not included within the area.

During discussion regarding the 2016 COLA, the Board questioned whether the Bay Area was the appropriate CPI-U for determining the annual COLA. After approving the 2016 COLA, the Board directed staff to conduct an analysis to determine the appropriate region to use for the annual COLA. You can find a report of the analysis on the MCERA website, found [here](#).

The results of the analysis led the Board to stop using the Bay Area CPI-U, and instead use the Western Region CPI-U for the 2017 and subsequent annual COLAs as the Western Region was shown to better approximate the rate of inflation in Mendocino County. Due to the statutory language requiring the use of a BLS CPI-U, the only areas considered in the analysis were the Bay Area and the Western Region.

As part of the change in region, the Board also directed the analysis be revisited every five years to ensure the Association continues to use the region that best matches Mendocino County inflation. The Board mentioned the possibility of pursuing legislation to correct the COLA ambiguity during its review of the analysis, but did not provide direction to pursue such at that time.

Current Statutory Language

The CERL section covering the COLA is §31870.1 shown below for review and reference. I have highlighted the language the Board has indicated it would like to address in a legislative proposal.

§31870.1. Determination; maximum annual change of three percent in allowances; limitation on reduction

The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section.

Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or superseded system who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current **Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated**, but such change shall not exceed 3 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 3 percent in allowances shall be accumulated to be met by increases or decreases in allowance in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this article, whichever is later.



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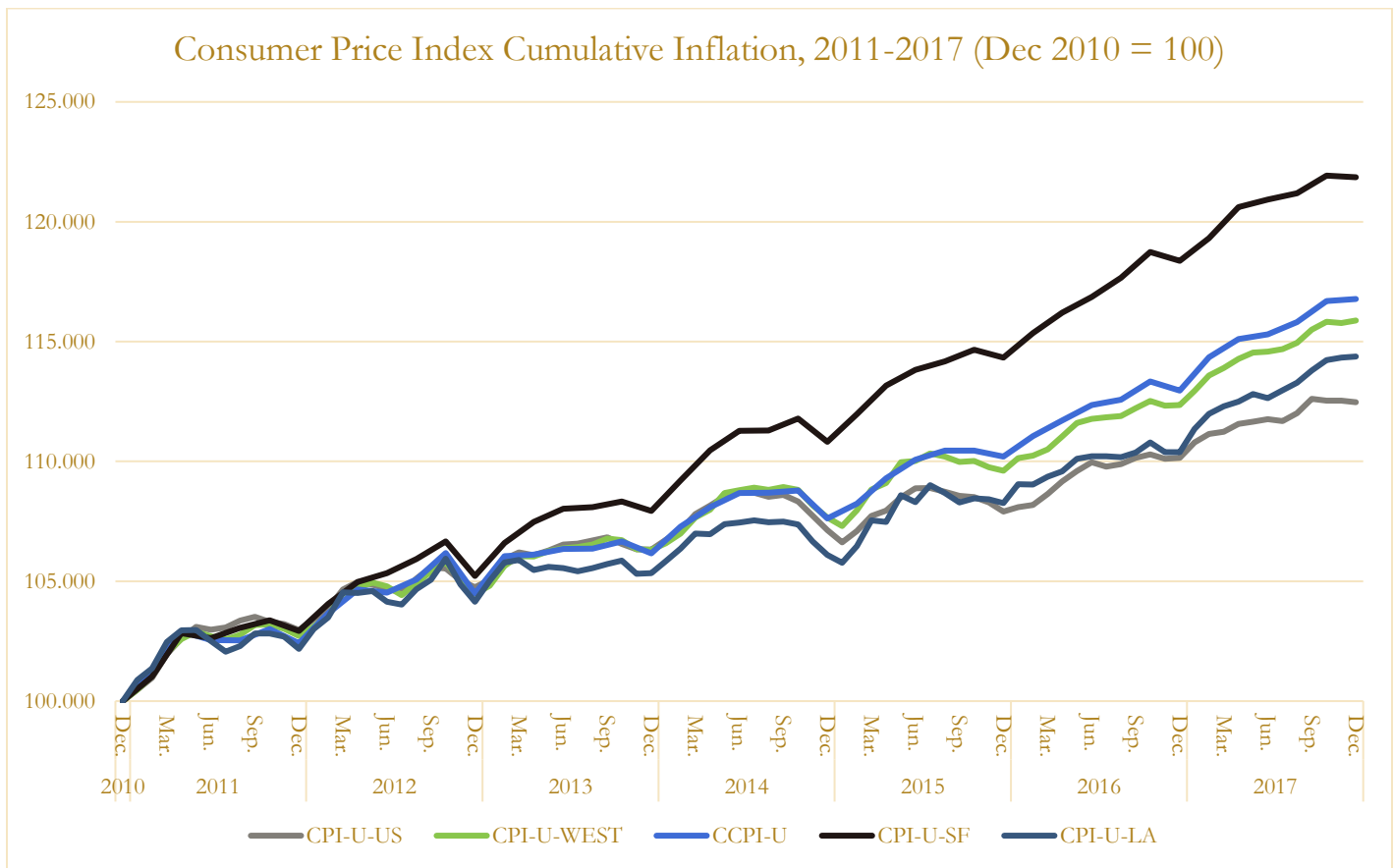
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Consumer Price Index History 2011-2017

The graph below shows the cumulative inflation in five areas from December 2010 through December 2017. The areas are: United States (CPI-U-US), Western Region (CPI-U-WEST), California (CCPI-U), Bay Area (CPI-U-SF), and Los Angeles Area (CPI-U-LA). Los Angeles is included in the comparison as it is relevant for the calculation of the California CPI.

The California CPI (CCPI) is included in the history as it has been mentioned as an alternate CPI that MCERA might use. The CCPI is not produced by the Bureau of Labor Statistics (BLS), rather it is calculated by the State of California, Department of Industrial Relations (DIR). According to information from the DIR website, the CCPI through the end of 2017 was calculated as the population weighted average of the Bay Area CPI and the Los Angeles Area CPI. In December 2017, the Los Angeles region represented nearly 65% of the combined population while the Bay Area represented just over 35% of the combined population.

The Board should also be aware that DIR recently changed the schedule of future CCPI releases due to changes in the regional indexes published by the BLS. Future DIR releases of the CCPI will occur up to eight weeks after the end of the reference period, meaning the December CCPI is expected to be released in late February. This release schedule would materially compress the work schedule for the computation of the annual COLA and if delayed further beyond the eight weeks, could impact the workflow of the annual COLA process.





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2018 Revision of the Consumer Price Index Geographic Sample

As mentioned above, beginning in 2018 the BLS is implementing a revision of the geographic areas included in the sample for the CPI. In addition to impacting the release dates of regional data, there are several other changes in geography that have potentially significant impacts on MCERA COLA discussions. Most notable among the changes is the change in the Bay Area region from San Francisco-Oakland-San Jose to San Francisco-Oakland-Hayward accompanied by a reduction in size of the Bay Area region from 10 counties to 5 removing Napa, Santa Clara, Santa Cruz, Solano and Sonoma counties from the area.

Additional changes in the BLS CPI geography in the Western Region include the creation of a new metropolitan area CPI, the Riverside-San Bernardino-Ontario, CA area a change in the reporting frequency of the San Diego-Carlsbad, CA CPI from semiannually to bimonthly. Whenever the BLS produces a new CPI series, the data originates at inception with a value of 100 and is estimated going-forward only. In the case of the Riverside-San Bernardino-Ontario, CA area the series began in December 2017.

With the addition of the Riverside-San Bernardino-Ontario, CA area CPI and the San Diego-Carlsbad, CA area CPI moving from semiannual to bimonthly release, it is unclear whether these areas will be included in the California CPI produced by the DIR in the future. It is also unclear, what other impacts the BLS revision of the geographic sample might have on the CCPI at this time.

The 2018 BLS revision of the CPI geographic sample will also result in the production of two sub-indexes within the Western Region, the Mountain Region and the Pacific Region. States included in the Mountain Region are Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah and Wyoming. The Pacific Region is composed of the states Alaska, California, Hawaii, Oregon and Washington.

When the 2016 COLA analysis was conducted the only BLS CPI compared was the Bay Area and the Western Region. The BLS CPI geography revision adds an additional option to that list, the Pacific Region. As mentioned above, the Board has already directed that the COLA Region Analysis should be reviewed after 5 years and it can easily include the review of this new sub-region as well.

Legal Interpretation of §31870.1

A literal reading of the COLA statute restricts the CPI available to the Board to those produced by the BLS. However, the statute could also be interpreted in a less literal way to include a CPI based on BLS CPI. A key component of this interpretation is determining which index is the closest approximation of the rate of inflation in Mendocino County. This broader interpretation would allow the Board to use the California CPI if that index provides the best fit for the County. Under this interpretation of the statute, there is less need for a legislative remedy since the CCPI is a viable option.

Preliminary Cost of Living Adjustment Proposal Recommendations

Due to the uncertainty regarding CPI data in the future and the potential of finding a better index from the expanded options that are expected to be available to the Board in the future, I recommend the Board not pursue legislation on the Cost of Living Adjustment at this time. I also recommend the Board continue to use the Western Region index for the granting of the annual COLA based on the results of the previous analysis. Finally, I recommend the Board postpone the COLA Region Analysis scheduled for completion by the end of the fourth quarter of 2021, to a scheduled completion date of the fourth quarter of 2023 in order to base the analysis and corresponding recommendation on five years of observations of the various



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price indexes. If the Board wishes to instead move forward in the pursuit of legislation, the following discussion presents alternatives and recommendations for legislative language.

Potential Legislative Changes

The Board has discussed a number of changes to this code section at various points since the June 2017 meeting. Reviewing those discussions results in the following list of options for potential proposed legislative changes:

1. Any county that is located outside a BLS local area (i.e. an area comprised of several counties) would be required to use the CPI from the BLS local area that is nearest the county;
2. Any county that is located outside a BLS local area would be allowed to use the CPI from the BLS local area that is nearest the county;
3. Any county that is located outside a BLS local area would be required use the CCPI as calculated by the DIR; and
4. Any county that is located outside a BLS local area would be allowed to use the CCPI as calculated by the DIR.

If there are other options the Board would like to consider, I am happy to expand this list.

Since the California CPI is not produced by BLS, the literal interpretation of the statute means it is not available to the Board for determining the annual COLA as the statute is currently constructed. Options 3 and 4 would make the California CPI available in the determination of the annual COLA where option 3 requires the use of CCPI for counties located outside a BLS defined local area and option 4 allows the use of CCPI by those counties.

Options 1 and 2 do not expand the choice set beyond the BLS defined local areas. Option 1 requires the use of the BLS CPI-U for the nearest local area while option 2 allows the Board to choose the nearest local area. Option 1 could present challenges on a number of fronts including definitions of 'nearest', mandating a change could draw opposition from plan sponsors and it could force other counties to change their current practices in the granting of the annual COLA thereby jeopardizing support from statewide organizations representing retirement plans.

Option 2 is listed for completeness, but is unnecessary. Guidance from legal counsel allows the Board to select a nearby BLS local area in which the county is not located if the Board feels the cost of living changes in that area best fit the cost of living changes in the county. Other counties have received similar guidance from their own legal counsel.

Cost of Living Adjustment Legislative Proposal Recommendations

If the Board wishes to instead move forward in the pursuit of legislation, I recommend the Board carefully deliberate this topic before committing additional resources to the effort. Further, because of the potential political issues involved with this proposal, I would recommend the Board be fully committed to the proposed legislation before committing to a course of action and the pursuit of a change in the COLA statute.

If the Board desires to move forward with such a proposal, I would offer the following suggestions regarding the proposed language. As mentioned above, recent legislative experience demonstrates that statutory changes which offer optional changes are more likely to see enactment than is language that contains requirements. This results in discarding options 1 and 3 from the list above. Since option 2 is already available to the Board, the remaining option to provide additional flexibility is option 4, adding the California CPI as an option for a board of retirement that is located outside of a BLS defined local area.

Given this, if the Board wishes to propose language to change the COLA statute, I would offer the following language as a potential legislative change for discussion purposes with the same editing format as used above as well as bolded language in the new section to highlight the difference between the existing language and the new language.



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Re: Potential 2019 Legislative Proposals Continued

§31870.1. Determination; maximum annual change of three percent in allowances; limitation on reduction

(a) The board shall before April 1 of each year determine whether there has been an increase or decrease in the cost of living as provided in this section.

(b) Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), for a county in which the county seat is located within a then current Bureau of Labor Statistics defined area that is comprised of one or more counties contained entirely within the boundaries of the State of California, every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or superseded system who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area in which the county seat is situated, but such change shall not exceed 3 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 3 percent in allowances shall be accumulated to be met by increases or decreases in allowance in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this article, whichever is later.

(c) Notwithstanding Section 31481 or any other provision of this chapter (commencing with Section 31450), for a county in which the county seat is not located within a then current Bureau of Labor Statistics defined area that is comprised of one or more counties contained entirely within the boundaries of the State of California, every retirement allowance, optional death allowance, or annual death allowance payable to or on account of any member, of this system or superseded system who retires or dies or who has retired or died shall, as of April 1st of each year, be increased or decreased by a percentage of the total allowance then being received found by the board to approximate to the nearest one-half of 1 percent, the percentage of annual increase or decrease in the cost of living as of January 1st of each year as shown by **either: the then current Bureau of Labor Statistics Consumer Price Index for All Urban Consumers for the area the Board determines best represents the County or the current State of California Department of Industrial Relations California Consumer Price Index for All Urban Consumers,** but such change shall not exceed 3 percent per year; however, the amount of any cost-of-living increase or decrease in any year which is not met by the maximum annual change of 3 percent in allowances shall be accumulated to be met by increases or decreases in allowance in future years; except that no decrease shall reduce the allowance below the amount being received by the member or his beneficiary on the effective date of the allowance or the application of this article, whichever is later.

Next Steps

When the Board determines which legislative changes to pursue in 2019, and the form those changes are to take, staff will begin the process of soliciting input from stakeholders and interested parties in the County and across the State. This process will be conducted in order to maximize the likelihood of the inclusion of the MCERA legislative proposal in the 2019 SACRS Legislative Platform as well as the likelihood of the eventual successful enactment of the proposal desired by the Board.

TO BE PUBLISHED IN THE OFFICIAL REPORTS OFFICE OF THE ATTORNEY
GENERAL
State of California BILL LOCKYER
Attorney General

	:	No. 02-608
OPINION	:	March 18, 2003
	:	
of	:	
	:	
BILL LOCKYER	:	
Attorney General	:	
	:	
ANTHONY S. DA VIGO	:	
Deputy Attorney General	:	
	:	

THE HONORABLE JACK SCOTT, MEMBER OF THE STATE SENATE,
has requested an opinion on the following question:

May the board of retirement of a county employees retirement association
appoint an alternate for the eighth office on the board, which office is held by a retired
member elected by the retired members of the association, without the approval of the
jurisdiction's electorate?

CONCLUSION

The board of retirement of a county employees retirement association may
appoint an alternate for the eighth office on the board, which office is held by a retired
member elected by the retired members of the association, without the approval of the
jurisdiction's electorate.

ANALYSIS

The Constitution requires that any changes in the method of selecting the

members of a board of retirement of a county employees retirement association be approved by the jurisdiction's electorate. Subdivision (f) of section 17 of article XVI of the Constitution states:

“With regard to the retirement board of a public pension or retirement system which includes in its composition elected employee members, the number, terms, and method of selection or removal of members of the retirement board which were required by law or otherwise in effect on July 1, 1991, shall not be changed, amended, or modified by the Legislature unless the change, amendment, or modification enacted by the Legislature is ratified by a majority vote of the electors of the jurisdiction in which the participants of the system are or were, prior to retirement, employed.”

The question presented for resolution is whether this constitutional provision is applicable when the board of retirement of a county employees retirement association appoints an alternate for the board's eighth office, which office is held by a retired member elected by the retired members of the association. We conclude that the constitutional provision is inapplicable to the appointment or election of an alternate.

The Legislature has enacted a comprehensive statutory scheme, the County Employees Retirement Law of 1937 (Gov. Code, §§ 31450-31898),¹ to provide for retirement benefits for county employees. (See *Traub v. Board of Retirement* (1983) 34 Cal.3d 793; 80 Ops.Cal.Atty.Gen. 11 (1997); 79 Ops.Cal.Atty.Gen. 95 (1996).) Two related statutes are the focus of this opinion. Under the terms of section 31520.1, county employees retirement associations have a governing board consisting of nine members, with the eighth member being “a retired member elected by the retired members of the association” Of the other eight members of the board, one is the county treasurer, one is a safety member of the association, two are non-safety members of the association, and four are members of the public (one of whom may be a county supervisor). Section 31520.1 also authorizes the possible appointment of an alternate, who must be a safety member of the association. If there is an alternate, section 31520.1 provides in part:

“The alternate member provided for by this section shall vote as a member of the board only in the event the second, third, seventh, or eighth member is absent from a board meeting for any cause, or if there is a vacancy with respect to the second, third, seventh, or eighth member, the alternate member shall fill such vacancy until a successor qualifies. The alternate shall sit on the board in place of

¹ All references hereafter to the Government Code are by section number only.

the seventh member when a member of the same service is before the board for determination of his retirement.”

Accordingly, “by law . . . in effect on July 1, 1991” (Cal. Const., art. XVI, § 17, subd. (f)), an alternate could be selected under the terms of section 31520.1 to vote for the eighth member on the board if the latter were absent and to fill the vacancy in the eighth office if one were to arise.

In 1992, the Legislature enacted section 31520.5 (Stats. 1992, ch. 96, § 1) and amended the statute in 2000 (Stats. 2000, ch. 486, § 1) and in 2001 (Stats. 2001, ch. 168, § 1). Section 31520.5 provides:

“(a) Notwithstanding Section 31520.1, in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662.2), the board of retirement may, by majority vote, appoint, from a list of nominees submitted by an organization consisting solely of retired members, an alternate retired member to the office of the eighth member, who shall serve until the expiration of the current term of the current eighth member and thereafter the alternate retired member shall be elected separately by the retired members of the association in the same manner and at the same time as the eighth member is elected.

“(b) The term of office of the alternate retired member shall run concurrently with the term of office of the eighth member. The alternate retired member shall vote as a member of the board only in the event the eighth member is absent from a board meeting for any cause. If there is a vacancy with respect to the eighth member, the alternate retired member shall fill that vacancy until a successor qualifies. The alternate retired member shall be entitled to the same compensation as the eighth member only if the alternate retired member is present and acting for the eighth member during the entire meeting.

“(c) If this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate safety member shall not sit and act for the eighth member.”

The issue to be resolved is whether the appointment and election of an alternate as authorized in section 31520.5 constitutes a change in “the number, terms, and method of selection or removal of members of the retirement board” for purposes of the Constitution. If so, the change must first be “ratified by a majority vote of the electors of

the jurisdiction in which the participants of the system are or were, prior to retirement, employed.” (Cal. Const., art. XVI, § 17, subd. (f).)

We do not believe that section 31520.5 constitutes a modification in the selection of retirement board members. The number of persons on the board remains at nine. Only one person may hold the office of the eighth member both before and after the enactment of section 31520.5. An alternate is not a “member” of the board for purposes of the constitutional voter approval requirement since there cannot be two eighth members. While an alternate on a board may have certain rights and meet certain qualifications (see, e.g., *Candlestick Properties, Inc. v. San Francisco Bay Conservation etc. Com.* (1970) 11 Cal.App.3d 557, 567-569; 82 Ops.Cal.Atty.Gen. 29 (1999); 78 Ops.Cal.Atty.Gen. 285 (1995)), we believe the constitutional voter approval requirement only applies to the number, terms, and method of selection of the regular members of a retirement board.

Our determination is confirmed by an examination of the purposes of the voter approval requirement as expressed when the requirement was added to the Constitution. The requirement was part of an initiative measure, Proposition 162, on the General Election ballot of November 3, 1992. The background for the proposed constitutional amendment was described by the Legislative Analyst as follows:

“Public pension systems in California provide retirement benefits to a wide range of state and local government employees--such as teachers, firefighters, and police officers. The largest of these pension systems are the state’s Public Employees’ Retirement System (PERS) and the State Teachers’ Retirement System (STRS). In addition, there are over 100 other public retirement systems that serve counties, cities, special districts, and the University of California.

“Funds for payment of retirement benefits under these public retirement systems come from assets held in trust by each system’s governing board. These assets include contributions from employees and employers, plus income earned on the investment of these contributions. The members of many public retirement systems elect some members of their governing boards. The State Constitution requires each board to use fund assets to: (1) provide benefits to members of the system and their beneficiaries, (2) minimize employer contributions, and (3) pay reasonable administrative costs. “The Constitution specifies the general authority and responsibilities of public pension systems. Within these limits, the Legislature can change various administrative functions and activities of public pension systems. For example, recent legislation removed the actuarial function from the

PERS Board and placed this function under a State Actuary appointed by the Governor and confirmed by the Legislature. (A primary function of the actuary is to determine the employer's annual contribution rate.) In addition, recent legislation also allowed the use of certain PERS assets to offset employer contribution costs." (Ballot Pamp., Gen. Elec. (Nov. 3, 1992) analysis of Prop. 162 by Legislative Analyst, p. 37.)

The proponents of the initiative described its purposes as follows:

"Do you believe politicians should be able to raid the pension funds of retirees?

"That's exactly what they have done--and will continue to do--unless we pass PROPOSITION 162.

"A YES vote on PROPOSITION 162 will prevent politicians from raiding the pension funds of firefighters, police officers and other active and retired public employees.

"It's not right to allow politicians to balance their budgets on the backs of seniors and retirees. For many retirees who have worked hard all of their lives, their only source of dignity and security is the pension they earned. They depend on those pensions to survive.

"....."
(*Id.*, argument in favor of Prop. 162, p. 38.)

The stated purposes of Proposition 162 would not be substantially served by requiring voter approval of the method of appointment or election of an alternate on a retirement board. An "alternate" is not a board member for the purposes of preventing "politicians from raiding the pension funds of firefighters, police officers and other active and retired public employees."

We conclude that the board of retirement of a county employees retirement association may appoint an alternate for the eighth office on the board, which office is held by a retired member elected by the retired members of the association, without such method of selection being submitted to the jurisdiction's electorate for approval.
