

EMPLOYEE RELATIONS POLICY COMMITTEE

Friday, March 30, 2012

10:00 a.m. – 3:00 p.m.

DoubleTree Hotel, Vineyard Room, Ontario, CA

Individuals who wish to review the full text of bills included in this packet are encouraged to do so by visiting the League's website at www.cacities.org/billsearch. Be sure to review the most recent version of the bill.

REVISED A G E N D A

Special Order of Business Post Redevelopment & State Budget Update 10:00 – 10:45 a.m., Harvest Room, Doubletree Hotel, Ontario

- I. Welcome and Introductions
- II. Public Comment
- III. State Legislative Update
 - a) Legislative Overview Discussion
 - b) Policy Discussion on Pending Legislation Action
 - i. AB 1837 (Dickinson) (*Attachment A*)
 - c) Review of Past Legislation (*Attachment B*) Discussion
- IV. Pension Update: Discussion
 - a) Comparative Analysis: League's pension policy and the Governor's 12 Point Plan (*Attachment C*)
- V. Next Meeting: FRIDAY, June 15, 2012, Sacramento Convention Center

Brown Act Reminder: The League of California Cities' Board of Directors has a policy of complying with the spirit of open meeting laws. Generally, off-agenda items may be taken up only if:

- 1) Two-thirds of the policy committee members find a need for immediate action exists and the need to take action came to the attention of the policy committee after the agenda was prepared (Note: If fewer than two-thirds of policy committee members are present, taking up an off-agenda item requires a unanimous vote); or*
- 2) A majority of the policy committee finds an emergency (for example: work stoppage or disaster) exists.*

A majority of a city council may not, consistent with the Brown Act, discuss specific substantive issues among themselves at League meetings. Any such discussion is subject to the Brown Act and must occur in a meeting that complies with its requirements.

NOTE: Policy committee members should be aware that lunch is usually served at these meetings. The state's Fair Political Practices Commission takes the position that the value of the lunch should be reported on city officials' statement of economic interests form. Because of the service you provide at these meetings, the League takes the position that the value of the lunch should be reported as income (in return for your service to the committee) as opposed to a gift (note that this is not income for state or federal income tax purposes—just Political Reform Act reporting purposes). The League has been persistent, but unsuccessful, in attempting to change the FPPC's mind about this interpretation. As such, we feel we need to let you know about the issue so you can determine your course of action.

If you would prefer not to have to report the value of the lunches as income, we will let you know the amount so you can reimburse the League. The lunches tend to run in the \$30 to \$45 range. To review a copy of the FPPC's most recent letter on this issue, please go to www.cacities.org/FPPCletter on the League's Web site.

COMMITTEE ON EMPLOYEE RELATIONS
Legislative Agenda
March 2012

AB 1831 (Dickinson) Local government: hiring practices.

Bill Summary:

AB 1831 would prohibit a local agency from inquiring into or considering the criminal history of an applicant or including any inquiry about criminal history on any initial employment application. The bill would authorize a local agency to consider an applicant's criminal history after the applicant's qualifications have been screened and the agency has determined the applicant meets the minimum employment requirements, as stated in any notice issued for the position. AB 1831 would not apply to a position for which a local agency is otherwise required by law to conduct a criminal history background check.

Background:

AB 1831 would “ban the box,” which would remove the standard question that requires the applicant to disclose his or her criminal history from a local agency initial employment application. The 2011 Public Safety Realignment (as enacted by AB 109, AB 117 and additional 2011 trailer bills) provides that state inmates convicted of a non-violent, non-serious, non-sex offense are supervised post-release by county probation departments. In addition, low-level felony offenders with no prior violent, serious or sex offense are supervised under county custody in lieu of the state Department of Corrections and rehabilitation. Proponents argue that employment of eligible people with a conviction history can assist the success of realignment at the local level, as studies have shown that stable employment significantly lowers recidivism and promotes public safety. Proponents are also concerned that otherwise qualified individuals are often discouraged from applying for work in the public and private sectors because of a conviction history inquiry on the initial application.

The National League of Cities’ Institute for Youth, Education & Families and the National Employment Law Project (NELP) partnered together and released a strategy guide called, *Cities Pave the Way: Promising Reentry Policies that Promote Local Hiring of People with Criminal Records*. According to the guide, over the past five years, cities nationwide have reshaped their municipal hiring policies to give opportunities to individuals released from prison who are looking for a job. According to the guide the most promising local policies that promote the hiring of people with criminal records were assembled. Chicago Mayor Richard Daley was quoted as saying, “Implementing this new policy won’t be easy, but it’s the right thing to do...we cannot ask private employers to consider hiring former prisoners unless the city practices what it preaches.” According to the study, the following communities have banned the box: Alameda County, Berkeley, Los Angeles, Oakland, and San Francisco.

Current Law:

Under current law, employers must provide qualifications standards and other selection criteria that are job-related and consistent with business necessary. During the hiring process, employers are prohibited from seeking information about:

- An arrest or detention that did not result in a conviction;
- An arrest for which the individual is out on bail pending trial;
- A copy of an applicant’s criminal records.

Candidates for peace officer positions are partially exempted from these protections, are subject to additional criminal background checks, and can be denied employment based on criminal background history.

Author's Comments:

According to the author's office, AB 1831 strives to reduce unnecessary barriers to employment for the nearly seven million adult Californians with a conviction history struggling to find work. Not only will this increase public safety, but it will also help fuel a strong economic recovery. AB 1831 will align city and county hiring practices with the policy of the State Personnel Board by removing any inquiry into a conviction history on an initial job application and delaying any background check until the employer has determined that the applicant's qualifications meet the job requirements.

The provision does not apply to positions for which the agency is required by law to conduct a criminal background check, such as positions in law enforcement, positions working with children, the elderly or disabled, and other sensitive positions.

With this bill, California's cities and counties will take an important step toward becoming model employers, leading the way for the private sector to allow people with a conviction history to compete fairly for employment without compromising safety and security on the job.

Comments:

AB 1831 would remove local discretion to decide whether or not to "ban the box" for the initial round of the application process. This bill potentially increases costs to public employers by mandating that employers wait until the second screening to ask about criminal convictions.

The author's office has asked the League to support this measure. They have also indicated their willingness to amend the portion of the bill that relates to the exemption for positions required by law to have a criminal background check. The committee may wish to consider supporting the bill if it is amended to reflect that local agencies have different policies for which positions are subject to background checks. This would allow local agencies the flexibility to decide which positions should be subject to the "ban the box" policy on the initial employment application.

Policy Questions:

- Is there a legitimate public policy purpose to "banning the box" on the initial employment application?
- Do the societal benefits of "banning the box" outweigh the potential increased cost to public employers?

Staff Recommendation:

Discussion.

Fiscal Impact:

Unknown.

Existing League Policy:

The League has no specific policy that relates directly to this legislation.

Support-Opposition (as of 3/23/12):

Support:

National Employment Law Project (Sponsor)
California National Association for the Advancement of Colored People (NAACP)
American Civil Liberties Union (ACLU) of California
Lawyers' Committee for Civil Rights of San Francisco Bay Area
"All Of Us Or None" (AOUON)
Legal Services for Prisoners With Children (San Francisco)
A New Way of Life Reentry Project (South Central Los Angeles)
The Legal Aid Society – Employment Law Center (San Francisco)
Rubicon Programs (East Bay)

Opposition:

Solid Waste Association of North America (SWANA)
California State Sheriffs' Association
California Fire Chiefs Association (initial oppose position)

COMMITTEE ON EMPLOYEE RELATIONS
March 2012
Past Legislation Staff Report

The following report is a legislative update of the bills that have been reviewed by the Employee Relations Policy Committee in 2011. This is just an update.

AB 148 (Smyth) Local government: ethics training: disclosure. (As amended April 14, 2011)

Bill Summary: This bill adds agencies compensation setting guidelines to the required ethics training curriculum. Additionally, requires local agencies to post ethics trainings records for all elected officials of a local agency on the local agency's Internet Web site, if one exists, and to also submit the records to the State Controller. Requires local agencies with written attendance compensation or reimbursement policies to post them on its website and submit copies to the Controller.

Bill Status: Held in Assembly Appropriations. Failed house or origin Deadline. Dead.

League Position: Watch

AB 582 (Pan). Open meetings: local agencies. (As amended on April 14, 2011)

Bill Summary: This bill would amend the Ralph M. Brown Act to require that proposed compensation increases of more than 5% for specified employees be publically noticed twice. The first notice is for general notice and nonvoting and discussion purposes. The second notice, if the compensation increase is deemed necessary by the legislative body, which must occur no less than 12 days after the first notice.

Bill Status: Held in Assembly Appropriations. Failed house or origin Deadline. Dead.

League Position: Concerned

AB 801 (Swanson) Code Enforcement Officers. Training. (As introduced February 17, 2011)

Bill Summary: This bill would extend powers of arrest, including felony arrest, and associated protections from liability to all code enforcement officers upon entering a memorandum of understanding with the chief of police or sheriff of the

applicable jurisdiction and successful completion an introductory course of training prescribed by the Commission on Peace Officer Standards and Training. Currently, this additional authority can only be extended to illegal dumping officers. Also, AB 801 would create a specific list of disqualifications that would prevent certain individuals from becoming Code Enforcement Officers, including conviction of a felony offense, conviction of a misdemeanor-felony drug offense, or following a court finding of mental incompetence.

Bill Status: Will be heard by the Senate Public Safety Committee.

League Position: AB 801 was significantly amended in January 2012. The League's public safety policy committee will be reviewing this bill at the March meeting.

AB 1184 (Gatto) Public Employees' Retirement Benefits. *(As amended on August 20, 2011)*

Bill Summary:

Requires the CalPERS Board to develop requirements for defining a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee. The bill also requires CalPERS to implement program changes to ensure that the liability associated with a contracting agency that creates a significant increase in actuarial liability due to increased compensation paid to a nonrepresented employee is borne by the contracting agency that gave the increase and not by other contracting agencies. The bill also authorizes the CalPERS actuary to assess the increase in liability by employers and adjust the affected employer's rates accordingly. The bill makes other related changes.

Bill Status: Moved to the Assembly Inactive File. The Legislature has put several bills related to pension on hold pending the work of the conference committee on pensions.

League Position: Watch

AB 1344 (Feuer) Local Governance. *(As amended on August 30, 2011)*

Bill Summary: This bill:

- Sets new standards on what can be included in executive manager and department-head contracts by prohibiting contracts from including automatic renewals, if they are linked to a salary increase above a cost-of-living adjustment and cash settlements that exceed existing statutory limits. Additionally, the measure requires that specific abuse-of-office provisions be added to manager and department head contracts;
- Requires that a proposed charter be presented to the voters at a statewide or general municipal election;
- Drastically alters the statutory requirement related to how cities and counties can put a proposed charter before the voters by requiring a 10-

week process that includes two public hearings, one of which must be conducted outside of normal business hours;

- Requires local agency agendas subject to the Ralph M. Brown Act be placed online; and
- Prohibits a legislative body from calling a special meeting regarding the salaries, salary schedules, or compensation paid in the form of fringe benefits of an executive manager or department head. This does not apply when a local agency calls a special meeting to discuss the agency's budget.

Bill Status: Signed by Governor Brown on October 9, 2011.

League Position: Oppose

AB 1355 (Lara) City officials: standards. *(As amended on March 24, 2011)*

Bill Summary: This bill requires a city council to adopt minimal educational and certification standards for their city clerk, city manager, and city treasurer. Additionally, requires that these standards be posted to the city's website.

Bill Status: Failed house or origin Deadline. Dead. The author has requested that the League, City Clerk's Association of California, the California Municipal Treasurers Association, and California City Management Foundation work with their office to discuss the possible development of minimum certification and educational standards.

League Position: Concerned.

COMMITTEE ON EMPLOYEE RELATIONS
Legislative Agenda
March 2012

Staff: Lobbyist: Natasha Karl (916) 658-8254

Comparative Analysis of the Governor's Pension Plan and League Policy

Introduction:

Governor Jerry Brown first released his 12-Point Pension Reform in late March 2011. The Governor rereleased his plan in October 2011, which had been refined a bit more than the earlier version. Finally, in early Feb. of this year the Governor released legislative language to the Conference Committee on Pensions, which was formed to deal with the issue of pension reform.

For the past two years pension reform has been a League strategic priority. In July 2011 the League's City Managers Department's Pension Reform Action Plan was presented to the League Board of Directors (Board) with recommendations of support from the Revenue and Taxation Committee as well as the Employee Relations Committee. The Board adopted the recommendation of the policy committees and Pension Reform Action Plan stands as League policy.

The following is an analysis of the significant pension reform proposals of the Governor's 12-Point Pension Reform Plan and the League's policy including the recently adopted Pension Reform Action Plan. The following pension reform proposals have been included in this analysis:

1. Eliminate the option to purchase service credit or "air time"
2. Prohibit retroactive benefit increases
3. Base final compensation on a 3-year average formula instead of the 1-year formula
4. Forfeiture of pension benefits upon felony conviction
5. Prohibit employer pension "holidays"
6. Increased cost sharing of pension costs
7. Prohibit employer paid member contributions (EPMC)
8. Restrict the use of retirees
9. Base final compensation on regular recurring pay
10. Hybrid pension plans
11. CalPERS Board membership
12. Increase retirement ages

1. ELIMINATE OPTION TO PURCHASE SERVICE CREDIT OR “AIR TIME”

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	Prohibits pension systems from allowing the purchase of “nonqualified additional retirement service credit.”	Supports eliminating the purchase of “air time” (purchase of time not served.
Do the plans align?	Yes	
Are there major differences?	No	

2. PROHIBIT RETROACTIVE BENEFIT INCREASES

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	Provides that enhancements to a public employee’s retirement formula or retirement benefit can only apply to service performed going forward and not to service performed previously. Also applies this principle to changes in member classifications or a change in employment that may enhance a member’s formula or benefit. Proposes to apply these changes to all public employers, new hires, and to current employees to the extent permissible under the CA Constitution and the US Constitution.	Prohibit retroactive benefit increases.
Do the plans align?	Yes	
Are there major differences?	No	

3. BASE FINAL COMPENSATION ON A 3-YEAR AVERAGE FORMULA INSTEAD OF THE 1-YEAR FORMULA

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	For the defined benefit portion of the hybrid, final compensation is calculated based on the highest average payrate for a 36-month period.	Base final retirement salary on three highest paid years worked.
Do the plans align?	Yes	
Are there major differences?	No	

4. FORFEITURE OF PENSION BENEFITS UPON FELONY CONVICTION

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	A public employee must forfeit all accrued rights and benefits in any public retirement system and cannot accrue future benefits in that public retirement system if he or she convicted of a felony for conduct arising out of or in the performance of his or her official duties, in pursuit of the office or appointment, or in connection with obtaining salary, disability retirement, service retirement, or other benefits. Retirement benefits attributable to service performed prior to the date of the first commission of the felony cannot be forfeited.	To the extent permitted by federal and state law prohibit payment of pension benefits to a public employee convicted of a felony related to fraudulently enhancing those benefits.
Do the plans align?	No.	
Are there major differences?	Yes. While the Governor’s plan and League policy both address forfeiture of benefits upon a felony conviction, the Governor’s plan reaches beyond League policy. The Governor’s plan addresses felonies that arise out of or in the performance of one’s duties as well as in the pursuit of office or appointment. Here the Governor is may be attempting to respond to the City of Bell scandal.	

5. PROHIBIT EMPLOYER PENSION “HOLIDAYS”

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	Requires in any fiscal year, employer contributions in combination with employee contributions to a defined benefit plan or component to be at least the normal cost for the defined benefit plan or component of that plan.	Prohibit employers and employees from taking contribution “holidays.”
Do the plans align?	Yes. Both the Governor’s plan and League policy support prohibiting pension holidays.	
Are there major differences?	Yes. By requiring at least the normal cost contribution the Governor’s plan achieves the same goal as League policy. The difference here is simply that League policy does not outline how to prohibit pension holidays and the Governor’s plan offers one solution.	

6. INCREASED COST SHARING OF PENSION COSTS

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	Requires new hires and current employees, to the extent permissible under the CA and US Constitutions, to contribute to a defined benefit plan or component at least 50 percent of the annual actuarially determined normal cost for the defined benefit plan or component. For current employees for which the bill is applicable, the bill requires a maximum of a three-year phase in for employees that contribute less than 50 percent of the normal cost. Prohibits, through collective bargaining or otherwise, employers from decreasing the employee contributions to less than 50 percent, even if the normal cost of the employee’s defined benefit or component decreases. Allows employee contributions to be considered employee	Remove caps on the percentage employees can pay for the total cost of PERS programs.

	contributions for federal tax purposes.
Do the plans align?	No
Are there major differences?	Yes. The Governor's plan approaches cost sharing very differently than the League policy proposes by focusing solely on a 50/50 split of the normal cost of pension benefits. The League is advocating a different approach that does not impose cost sharing on current or future employees, but rather leaves to local agencies the ability to collectively bargain greater cost sharing. The League's policy approaches greater flexibility at the local collective bargaining table by requiring that the statutory caps on member contributions be eliminated. By doing so, local agencies would have the same flexibility that the State has to collectively bargaining greater cost sharing of pension costs.

7. PROHIBIT EMPLOYER PAID MEMBER CONTRIBUTIONS (EPMC)

	GOVERNOR'S PLAN	LEAGUE POLICY
Description	Prohibits a public employer from paying on behalf of a member of a retirement system any of the member's share of required employee contributions.	Requires that employees pay the employee share of PERS (e.g. 7-8% for miscellaneous employees and 8-9% for safety employees.) Also eliminate the availability of Employer Paid Member Contributions (EPMC).
Do the plans align?	Yes	
Are there major differences?	No	

8. RESTRICT THE USE OF RETIREES

	GOVERNOR'S PLAN	LEAGUE POLICY
Description	Provides that a person that retires from a public employer and is employed by or hired through a contract either directly or through a third party for another public employer must reinstate from retirement. However, a person who retires from a public employer may serve without reinstatement from	Allow retired annuitants to work for CalPERS agencies under contract or appointment by a local agency.

	retirement or loss or interruption of benefits upon appointment by an appointing power of a public employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed to perform work of a limited duration. Appointments cannot exceed 960 hours or 120 full-time days in a consecutive 12-month period.
Do the plans align?	No.
Are there major differences?	Yes. It is not entirely clear how the Governor’s plan differs from current statutory requirements for retirees. His plan seems to align with what is already statutorily required of retirees. On the other hand, League policy fosters a broad use of retirees. Though, the League does support restricting the use of retirees who have retired with a “golden handshake” or other retirement incentive.

9. BASE FINAL COMPENSATION ON REGULAR RECURRING PAY

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	Prohibits “payrate” from including accrued vacation, sick, or other leave of any form, severance pay, overtime work (with exceptions), monetary value of any in-kind remuneration. Also, prohibits supplemental payments for items, including, but not limited to, uniform allowances, housing allowances, employer contributions to deferred compensation or defined contributions plans, and bonuses.	Supports calculating benefits only on base salary eliminating all “spiking.” No overtime, vacation or sick leave should be included in the pension calculation. Eliminate the CalPERS contract option to include Employer Paid Member Contributions (EPMC) in the calculation of an employees’ base pay for retirement purposes.
Do the plans align?	Yes. Both the Governor’s plan and League policy support basing final compensation on regular recurring pay or base pay.	
Are there major differences?	Yes. League policy goes beyond the Governor’s plan to also prohibit EPMC in the calculation of employees’ base pay for retirement purposes.	

10. HYBRID PENSION PLANS

	GOVERNOR'S PLAN	LEAGUE POLICY
Description	<p>Requires employers to offer to new hires a hybrid pension plan made available by the public retirement system or an alternative pension plan option that is determined to have no greater risk and no greater costs to the employer than any available hybrid plans of the retirement system.</p> <p>Provides that, to the extent employee contributions to a defined benefit plan or to a defined benefit portion of a hybrid plan, the public employer must provide to any public employee who is a member of the defined benefit pension plan the option to elect to participate prospectively in a hybrid pension plan. The election to participate prospectively is irrevocable.</p> <p>Requires a hybrid pension plan to consist of a defined benefit component, defined contribution component, and, when applicable, social security benefits. Requires that the hybrid plan be designed with the goal of providing annually during retirement a replacement income of 75 percent of a public employee's compensation, based on a full career in public service, which is defined as 30 years for safety and 35 years for miscellaneous. Also requires the hybrid pension plan to target a cap on the combined defined benefit and defined contribution benefit amount as specified in Section 430(b) of Title 42 of the US Code (\$110,000). For those receiving social security benefits or 120 percent of the</p>	<p>Provide employers with a hybrid pension system <u>option</u> that caps the defined benefit PERS pension at an annual maximum retiree benefit equal to 70 percent of the retiring employees' eligible base pay and supplement the defined benefit plan with a risk managed PERS defined benefit contribution plan. A defined contribution plan should integrate with a defined benefit plan not substitute for it.</p> <p>Provide a broader range of formula choices with lower benefit local options for all types of member classes. Repeal SB 400/AB 616 formulas returning to more sustainable PERS benefit formulas.</p>

	contribution and benefit base as specified Section 430(b) of Title 42 of the US Code (\$132,100).
Do the plans align?	No
Are there major differences?	Yes. The Governor has a much more detailed plan than League policy spells out. Though while more robust than League policy, his plan still lacks a significant amount of detail about implementation. One area of significant difference is that the Governor’s plan is mandatory for new hires, whereas League policy supports having a professionally managed option that can be bargained locally. Another area of major difference is the replacement allowance issue. The Governor’s plan proposes a 75% replacement when combining a defined benefit, defined contribution, and social security (where applicable). However, League policy supports a defined benefit component alone to provide up to 70% income replacement to be supplemented with a defined contribution.

11. CALPERS BOARD MEMBERSHIP

	GOVERNOR’S PLAN	LEAGUE POLICY
Description	Adds additional members to the CalPERS Board including: (1) one person appointed by the Governor with expertise in health insurance and is not interested in a public pension or retirement system; and (2) two persons, appointed by, and serve at the pleasure of the Governor, who represent the public, have financial expertise, and are not interested in a public pension or retirement system.	Restructure the CalPERS Board with a substantial increase in the independent public members (preferably with financial expertise) to ensure greater representation of tax payer interests with regard to public pension decisions.
Do the plans align?	Yes	
Are there major differences?	Yes	

12. INCREASE RETIREMENT AGES

	GOVERNOR'S PLAN	LEAGUE POLICY
Description	<p>Provides that normal retirement age for safety classifications is 57 and for all other public employees is 67.</p> <p>To be eligible to make an application for service retirement a person must be credited five years of service and attain 52 years of age for safety and 57 for all other public employees.</p>	<p>Give government agencies through the collective bargaining process the option to extend retirement ages for miscellaneous employee up to social security retirement ages.</p> <p>Seek minimum (floor) retirement age of 60 for miscellaneous employees and 55 for safety employees before earning full retirement benefits.</p>
Do the plans align?	No.	
Are there major differences?	Yes. The Governor's plan imposes increased retirement ages, while League policy supports collectively bargaining increasing retirement ages.	