

GOVERNANCE, TRANSPARENCY & LABOR RELATIONS POLICY COMMITTEE

Thursday, June 7, 2018

10:00 a.m. – 3:00 p.m.

Sacramento Convention Center, 1400 J Street, Room 203, Sacramento

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 and clicking on "Bill Search" found at the left column. Be sure to review the most recent version of the bill.

A G E N D A

SPECIAL ORDER: State Budget and Issues Briefing for all policy committee members

10:00 – 10:45 a.m., Room 204, Sacramento Convention Center

Upon adjournment, individual policy committee meetings will begin

- I. Welcome and Introductions
- II. Public Comment
- III. 2018 Legislative Agenda (*Attachment A*) *Action*
 - [SB 783 \(Pan\) Public Employee Pension Funds: Divestment Proposals: Review](#)
 - [SB 1421 \(Skinner\) Peace officers: Release of Records](#)
- IV. Legislative Update *Informational*
 - Bills of Interest (*Handout*)
- V. Update on Election Related Issues *Informational*

Ethan Jones, Chief Consultant, Assembly Committee on Elections and Redistricting
- VI. Proactively Managing your Pension Plan's Unfunded Liability *Informational*

Randall Dziubek, Deputy Chief Actuary of Valuation Services, CalPERS
- VII. GTLR Work Plan and Strategic Goal Update *Informational*

Next Meeting (tent.): Annual Conference, Long Beach, September 12

Staff will notify committee members after July 20th if the policy committee will be meeting in September.

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:

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

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 may 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 Website.

GOVERNANCE, TRANSPARENCY AND LABOR RELATIONS POLICY COMMITTEE
Legislative Update
June 2018

Staff: Dane Hutchings, Legislative Representative (916) 658-8210

1. SB 783 (Pan) Public employee pension funds: divestment proposals: review
[\(Full Bill Text Here\)](#)

Bill Summary:

This bill would create the Commission on Pension Investment, Divestment, and Engagement in the Controller's office. The commission would use an objective, analytical process to assess the financial impact of legislative proposals for state public pension funds to divest assets or otherwise restrict or prohibit pension fund investments.

SB 783 would provide the Legislature and the Governor objective information on the real cost and effectiveness of divestment proposals.

Bill Description:

The Commission on Pension Investment, Divestment, and Engagement within the State Controller's Office would consist of 5 members. As drafted, the commission would be made up of the following members:

1. A person appointed by CalPERS in even numbered years and CalSTRS in odd numbered years,
2. The Director of Finance,
3. The Legislative Analyst,
4. An actuary appointed from the California Actuarial Advisory Panel (CAAP),
5. A person chosen by the chairperson of Assembly Committee on Public Employees, Retirement, and Social Security and the chairperson of the Senate Committee on Public Employment and Retirement

This bill allows for the Legislative PERS Committee Chairs, the Senate Pro Temp, or the Assembly Speaker to request that a bill be reviewed by the commission, which shall provide its analysis to the appropriate policy and fiscal committees not later than 60 days after receiving a request.

This bill would establish an analytical method using criteria for evaluating each legislative proposal to divest or restrict pension fund investments for the proposal's effectiveness, both in terms of cost and in achieving the proposal's intended policy objective.

The commission would evaluate:

- The effect on the expected return on investment to the fund's portfolio, including the probability of ongoing gains or losses resulting from the divestment mandate or investment prohibition.
- The impact on the funded status of the pension fund.
- The consequence to employer and employee contribution rates.
- The administrative costs on the pension system to analyze, report, and implement the divestment proposal.
- Whether the divestment proposal would have de minimis impact on the fund's portfolio.
- Whether the divestment proposal would, taken cumulatively with other divestment proposals, have significant impact on the fund's portfolio.

The commission would be able to collaborate with the University of California to make use of the university's resources that specialize in providing objective financial and policy analysis. The bill would also create the Divestment Proposal Research Fund to support the work of the commission.

This bill would also declare that the, a divestment proposal should only be adopted if:

- The proposal's policy objective is a critical priority of the Legislature and the Governor.
- Other alternatives for achieving the policy goals of the proposal, such as engagement strategies or regulatory action, have failed.
- The Legislature and the Governor are fully aware of the costs of imposing the divestment proposal.
- The proposal does not cause the public employee pension board trustees to violate their fiduciary duties.

Background:

There are increasing numbers of legislative proposals that seek to require or pressure state public employee pension funds to divest from or restrict specified investments.

While these proposals are often motivated by well-intended public policy purposes, divestment initiatives are often in conflict with the fundamental public policy purpose of a public employee pension fund. The state constitution gives the retirement board of a public pension or retirement system exclusive fiduciary responsibility over the assets of the public pension or retirement system. These bills limit the ability of CalPERS to maximize returns to fund investments in order to ensure that monies are available to pay the deferred compensation earned by public employees over the course of their service to California.

Divestment proposals can often result in increased costs and reduced returns to a public employee pension fund that then cause increases in employer contribution rates, possible increases in employee contribution rates, and possible pressure to increase employee compensation.

Fiscal Impact:

Unknown: A fiscal analysis has not yet been prepared on this measure. However, League staff believes that this bill has the possibility to increase CalPERS returns on investments or at least minimize future losses. This may prevent employee contribution rates from growing which would save cities a significant amount of money. The bill initially allocates 2 million dollars to create the program.

Existing League Policy:

Divestment in industries that may run contrary to environmental or other broad policy goals as an investment strategy can present challenging conflicts for CalPERS in balancing current affairs against its fiduciary duty to maximize retirement investments.

The League supports CalPERS' priority to its members as stated in the State Constitution Article 16, Section 17, "[a] retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty."

The League supports responsible investment strategies that balance the short and long term ability of CalPERS to meet its financial commitments to its members.

Any divestment policy must be well vetted and must include the opportunity to identify alternative revenue sources consistent with the intended impact of the divestment and CalPERS' fiduciary responsibilities outlined above.

The League supports CalPERS proxy access efforts to affect change from within businesses CalPERS has invested in to ensure they are well managed for sustained, responsible, long-term success.

Comments:

Staff Comments:

This bill was a "gut and amend" by the Chair of the Senate Committee on Public Employment and Retirement and is currently in the Assembly Committee on Public Employees, Retirement, and Social Security. This bill will have to go back to the Senate for concurrence as well as going through its current committee.

According to the author, the goal of this bill is to provide a logical process in determining how best to balance the Legislature's ability to limit certain investments made by public employee pension funds with the public pension board's fiduciary responsibilities.

The process would better inform all parties in determining the appropriate balance between the Legislature's constitutional authority to in exceptional cases restrict certain pension fund investments and a public employee pension board's constitutional authority to invest pension assets.

Given the League's divestment policy, shining a light on the significant impacts that divestment can have on the health of CalPERS' funding level would hold the Legislature and the Governor more accountable when deciding to implement divestment policies.

Support-Opposition: (As of 04/03/2018)

Support:

California Retired Teachers' Association

Opposition:

None on File

Staff Recommendation:

League staff recommends the committee take a **Support if Amended** position.

League staff recommends two amendments:

1. Add a sixth member of the commission representing local government finance.
2. Given that the intent language states, "In determining the appropriate balance between exercising the Legislature's constitutional authority to restrict certain pension fund investments and a public employee pension board's constitutional authority to invest pension assets, greater weight may be given to targeted, well-crafted divestment proposals when public employee pension funds are substantially overfunded. However, when the funds face significant unfunded actuarial liabilities, greater weight must be given to maximizing investment return." It seems prudent that the funded level of the public pension fund should be given greater weight in divestment decisions. Language should also be added to the list of four criteria currently listed in the bill as prerequisites for the adoption of divestment proposals.

Committee Recommendation:

Board Action:

2. SB 1421 (Skinner) Peace officers: release of records. ([Full Bill Text Here](#))

Bill Summary:

SB 1421 will allow public access to the investigation records related to a law enforcement officer's use of deadly force, discharge of a firearm, on the job sexual assault, or work-related dishonesty. This bill would provide for the of police personnel files under various circumstances.

Bill Description:

This bill permits inspection of specified peace and custodial officer records pursuant to the California Public Records Act (CPRA). SB 1421 allows the public to access records relating to law enforcement if they involve the following:

1. Incidents involving the discharge of a firearm or electronic control weapons by an officer;
2. Incidents involving strikes of impact weapons or projectiles to the head or neck area;
3. Incidents of deadly force or serious bodily injury by an officer;
4. Incidents of sustained sexual assault by an officer; or
5. Incidents relating to sustained findings of dishonesty by a peace officer, which includes including perjury, false statements, false reports, and evidence tampering.

To account for privacy and safety interests, SB 1421 allows withholding these records if there is a risk of danger to an officer or someone else, or if disclosure would represent an unwarranted invasion of an officer's privacy.

All reports of the investigation or analysis of the evidence or the conduct, and any findings, recommended findings, discipline, or corrective action taken shall also be disclosed if requested pursuant to the CPRA.

This bill:

Provides for redaction of records under the following circumstances:

1. To remove personal data or information, such as a home address, telephone number, or identities of family members, other than the names and work-related information of officers.
2. To preserve the anonymity of complainants and witnesses.
3. To protect confidential medical, financial, or other information of which disclosure is specifically prohibited by federal law or would cause an unwarranted invasion of personal privacy that clearly outweighs the strong public interest in records about misconduct by peace officers and custodial officers.
4. Where there is a specific, articulable, and particularized reason to believe that disclosure of the record would pose a significant danger to the physical safety of the officer or another person.

Permits a law enforcement agency to withhold a record that is disclosable during an investigation into the use of force by a peace officer until the investigating agency

determines whether the use of force violated the law or agency policy. Additionally the agency may withhold a record until the district attorney determines whether to file criminal charges for the use of force. Specifies a process for continued withholding of records if there is an active and ongoing investigation.

Background:

The high profile shootings of unarmed black men by police officers has sparked a backlash by organizations such as Black Lives Matter and the American Civil Liberties Union. Many bills were introduced in response to these incidents. Specifically, this bill was introduced after the killing of Stephon Clark in Sacramento, California. The city and the Sacramento Police Department were criticized regarding their response to the incident and how they disciplined the officers who were involved in the shooting. Many members of the community have lost their trust in the police department and are asking for more transparency.

Currently, the public cannot access, for example, records related to officer-involved shootings, or when an officer has been found to commit sexual assault on the job. In contrast, there is public access to records, including disciplinary actions, for all other categories of public employees.

Many states recognize that disclosure of critical incidents is an element of peace officer oversight, with 28 allowing some access to peace officer internal investigation records. Alabama, Connecticut, Minnesota, North Dakota, Ohio, Arizona, Florida, Georgia, Maine, Wisconsin, Utah, and Washington, for example, have disclosure laws that are more extensive than what is being proposed in SB 1421. In addition to these 12 states, 15 states allow for disclosure of a limited set of disciplinary records, as is proposed in SB 1421.

The vast majority of California peace officers have excellent records and have never used serious force. According to the author, providing a level of transparency can create better trust as well as accountability between local agencies and the communities they serve.

Fiscal Impact:

According to the Senate Appropriations Committee:

1. State agencies: Costs to individual state departments that employ officers vary, ranging from minor and absorbable to a potentially-significant increase in ongoing workload necessitating the hiring of additional personnel to respond to a greater number of CPRA requests and review and redact the records accordingly. (General Fund, special funds*)

2. Local agencies: Potentially-major ongoing non-reimbursable local costs, potentially in the millions of dollars statewide given the large number of local agencies employing officers (482 cities and 58 counties) that would be responding to a greater number of CPRA requests for personnel and other records related to specified sustained findings against officers and reports, investigations, and findings related to specified incidents. (Local funds)
 - a. Motor Vehicle Account and various special funds

Existing League Policy:

The League opposes legislation making it a misdemeanor to disclose peace officer personnel records and citizen complaint records, as well as prohibiting the use of documents or information obtained in violation of this procedure in any administrative proceeding against a peace officer, and any measure that makes it more difficult to discipline the misconduct of police officers.

The League supports maintaining the confidentiality of personnel matters and protecting public safety personnel discipline records from public disclosure.

Public trust and confidence in government is essential to the vitality of a democratic system and is the reason ethics laws hold public officials to high standards.

Laws alone cannot foresee or prevent all actions that might diminish the public's trust in governmental institutions.

Transparency laws impose the minimum standards of conduct; to preserve public trust, public officials should aspire to conduct that exceeds minimum standards.

State revisions to laws governing local agency transparency and ethics should address material and documented inadequacies in those laws and have a reasonable relationship to resolving those problems.

In order to encourage and facilitate compliance with new transparency and ethics requirements, State laws should be internally consistent, avoid redundancy and be mindful of the practical challenges associated with implementation.

State officials and agencies should aspire to conform to the same level of transparency and ethical behavior as is imposed on local officials and agencies.

Comments:

Staff Comments:

The California Police Chiefs Association is asking for several amendments.

1. For instances of dishonesty and sexual assault, the bill specifies that there needs to be a "sustained finding" in order to release information. The California Police

Chiefs Association would like to see this standard of “sustained finding” extended to specified use of force incidents.

2. They would also like to narrow the definition of what is released and exclude the names of those involved in the incident if it has been found, through a thorough review process, that there was no wrongdoing by the officer. Their intent is to prevent unwarranted public attacks against innocent officers and focus the measure towards the most serious cases.

Support-Opposition: (as of 05/025/2018)

Support:

A New Path
A New Way of Life Re-entry Project
Advancement Project
AF3IRM Los Angeles
AFSCME Local 329
Alliance for Boys and Men of Color
Alliance San Diego
American Civil Liberties Union of California
American Federation of Teachers, AFL-CIO
American Friends Service Committee
Anaheim Community Coalition
Anti Police – Terror Project
Anti-Recidivism Coalition
Arab American Civic Council
Asian Americans Advancing Justice
Asian Law Alliance
Bend the Arc
Black American Political Association of California
Black and Pink, Inc.
Black Lives Matter – California
Cage-Free Repair
California Alliance for Youth and Community Justice
California Broadcasters Association
California Church IMPACT
California Courage Campaign
California Faculty Association
California Federation of Teachers
California Immigrant Policy Center
California Immigrant Youth Justice Alliance
California Latinas for Reproductive Justice
California News Publishers Association
California Nurses Association
California Public Defenders Association
Californians Aware

Californians for Justice
Californians United for Responsible Budget
Catholic Worker Community
CDTech
Center for Juvenile and Criminal Justice
Chican@s Unidos
Children's Defense Fund
Chispa
Church in Ocean Park
City of Berkeley
Climate Action Campaign
Coalition for Justice and Accountability
Committee for Racial Justice
Communities United for Restorative Youth Justice
Community Coalition
Conference of California Bar Associations
Council on American-Islamic Relations
Critical Resistance
CTT
Davis People Power
Dignity and Power No
Drain the NRA
Earl B. Gilliam Bar Association
East Bay Community Law Center
Ella Baker Center for Human Rights
Equal Justice Society
Equity for Santa Barbara
Fannie Lou Hamer Institute
First Amendment Coalition
Friends Committee on Legislation of California
Greater Long Beach
Homeboy Industries
Immigrant Legal Resource Center
Indivisible CA: StateStrong
InnerCity Struggle
Interfaith Movement for Human Integrity
Interfaith Worker Justice San Diego
IUCC Advocates for Peace and Justice
Jack and Jill America of America, Incorporated, San Diego Chapter
Jewish Action
Journey House
Koreatown Immigrant Workers Alliance
LA Voice
LAANE
Law Enforcement Accountability Network
Lawyers Committee for Civil Rights, San Francisco Bay Area

Legal Services for Prisoners with Children
March and Rally Los Angeles
Media Alliance
Mexican Legal Defense and Education Fund
Mid-City CAN
Motivating Individual Leadership for Public Advancement
National Juvenile Justice Network
National Lawyers Guild, Los Angeles
National Lawyers Guild, San Francisco Bay Area
Oak View ComUNIDAD
Oakland Privacy
Orange County Communities Organized for Responsible Development
Orange County Equality Coalition
Pacific Media Workers Guild
PACT: People Acting in Community Together
Partnership for the Advancement of New Americans
PICO California
PolicyLink
Press4WordPrevention Institute
Public Health Justice Collective
R Street Institute
Reporters Committee for Freedom of the Press
Resilience Orange County
Richard Barrera, Trustee, Board of Education
Riverside Coalition for Police Accountability
Riverside Temple Beth El
Root and Rebound
San Diego LGBT Community Center
San Diego Organizing Project
San Diego Unified School District
San Francisco District Attorney's Office
San Francisco Public Defender
San Gabriel Valley Immigrant Youth Coalition
Santa Ana Building Healthy Communities
Santa Ana Unidos
Service Employees International Union Local 1000
Showing Up for Racial Justice, Bay Area
Showing Up for Racial Justice, Long Beach
Showing Up for Racial Justice, Marin
Showing Up for Racial Justice, Rural-NorCal
Showing Up for Racial Justice, Sacramento
Showing Up for Racial Justice, Santa Barbara
Silicon Valley De-Bug
Social Justice Learning Institute
Stop LAPD Spying Coalition
Street Level Health Project

The Black Jewish Justice Alliance
The Education Trust-West
The W. Haywood Burns Institute
Think Dignity
Transgender Law Center
UAW 2865, UC Student-Workers Union
Union of the Alameda County Public Defender's Office
UNITE HERE Local 11
Urban Peace Institute
Urban Peace Movement
Village Connect
White People for Black Lives/AWARE LA
Women For: Orange County
Women Foundation of California
Young Women's Freedom Center
Youth Alive
Youth Justice Coalition
8 individuals

Opposition:

Association of Deputy District Attorneys
Association for Los Angeles Deputy Sheriffs
California Association of Highway Patrolmen
California Narcotic Officers' Association
California Peace Officers Association
California State Sheriffs' Association
Los Angeles County Professional Peace Officers Association
Los Angeles Deputy Probation Officers, AFSCME Local 685
Los Angeles Police Protective League
Peace Officers Research Association of California
San Bernardino Sheriff-Coroner's Office

Oppose Unless Amended:

California Police Chiefs Association (May 29, 2018)

Staff Recommendation:

League staff recommends an oppose unless amended position to align ourselves with the Californian Police Chiefs Association.

Note: This measure will also be presented to the Leagues Public Safety committee for a recommendation

Committee Recommendation:

Board Action: