

MEMORANDUM

DATE: September 21, 2011
TO: SACRS Administrators
FROM: Jim Lites
RE: 2012 proposed legislation

MEETING DATE

OCT 12 2011

AGENDA ITEM

#10

Attached please find the original legislative proposals for possible SACRS sponsorship in 2012 submitted to the SACRS Legislative Committee. The Legislative Committee recommendations to SACRS are outlined below. The proposals will all be considered at the SACRS Business Meeting on Friday, November 18.

Proposals Recommended for 2012 Sponsorship

LACERA #2 – Electronic Signatures – Authorizes 1937 Systems to adopt regulations to accept electronic signatures that carry the same force and effect of manual signatures.

LACERA #3 – Public Records Act Requests – Aligns Government Code Section 31532 with the CalPERS statute within Section 20230 which provides stronger protections for confidentiality of retirement system member benefit information.

SACRS #1 – Group Dental Plan – Authorizes the creation of a group dental plan for 1937 Act retirees similar to the SACRS retiree vision plan enacted in 2007.

1937 Act Trustee Continuing Education – This language was generated earlier this year to establish a continuing education program requirement for 1937 Act system trustees. It is now being brought before SACRS for formal consideration.

Mendocino #1 – Heart Illness Rebuttable Presumption – In *Pellerin v. KCERA*, the court created a heart illness rebuttable presumption. However, the statute has not been updated to reflect the court ruling. The SACRS Legislative Committee approved this item as a component of the larger IRS compliance legislation, expected to be introduced by SACRS in 2012.

Proposals NOT Recommended by the Committee for 2012 SACRS Sponsorship

LACERA #1 – Errors and Omissions. The Committee was concerned that the proposal, while based on the CalPERS statute, was imbalanced with respect to an error caused by the retirement system and if re-capture of overpayments to a retiree were limited, IRS compliance issues could result.

SACRS LEGISLATIVE PROPOSAL

Title of Issue: Use and Acceptance of Electronic Signatures by County Retirement Systems

Association: Los Angeles County Employees Retirement Association

Contact Person: Robert S. Van Der Volgen, Jr.

Phone No.: 626-564-2340

Fax No.: 626-564-2336

1. **Description of problem:** Under current law, a county retirement system may accept a member's digital signature with the same force and effect as a manual signature, but only if it meets the requirements of Section 16.5 of the Government Code and regulations adopted there under by the Secretary of State. Compliance with Section 16.5 and regulations adopted there under is so costly and burdensome as to render it impractical for use by county retirement systems and their members. The Franchise Tax Board has an exemption under CA Revenue and Taxation Code Section 18621.5(c).
2. **Recommended solution:** Amending the Retirement Law to allow county retirement systems to adopt, at their election, regulations allowing for the use and acceptance of a member's electronic signature with the same force and effect as a manual signature, provided it is submitted using electronic technology that the board determines sufficient to ensure its integrity, security and authenticity. Similar language to Revenue and Taxation Code Section 18621.5(c) has been drafted to be added to CERL.
3. **Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?** If enacted, the proposed legislation would be applicable to all '37 Act systems. Identical language may be added to a section of the Retirement Law so as to allow for the use and acceptance a member's electronic signature by all '37 Act counties.
4. **Do you anticipate that the proposed legislation would create any major problems, such as conflicting with Proposition 162 or creating a problem with any of the other 19 SACRS retirement associations?** No.
5. **Who will support or oppose this proposed change in law?** Opposition to this proposal is unlikely.
6. **Who will be available from your association to testify before the legislature?** Robert S. Van Der Volgen Jr., Chief Counsel, LACERA.

**Proposal for Amending Retirement Law to Provide for the
Use and Acceptance of Electronic Signatures by County Retirement Systems**

Existing Government Code Section 31527 is amended to add subsection (i).

Notwithstanding any other provision of law, the board may use and accept any election, statement, request, or any other document from a member that is otherwise required to be signed, that is submitted using an electronic signature with the same force as a signed, valid original document submitted using a traditional medium, provided the document and electronic signature are submitted using technology the board determines sufficient to ensure its integrity, security and authenticity.

Existing California Revenue and Taxation Code

18621.5. (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic technology shall be in a form as the Franchise Tax Board may prescribe and is not complete, and therefore not filed, unless an electronic filing declaration is signed by the taxpayer, in accordance with Section 18621 in the case of individuals, subdivision (a) of Section 18505 in the case of estates or trusts, corporations, or limited liability companies classified as corporations for California income tax purposes, subdivision (a) of Section 18633 in the case of a partnership, or Section 18633.5 in the case of limited liability companies classified as partnerships for California income tax purposes. The Franchise Tax Board may prescribe forms and instructions for requiring the electronic filing declaration to be retained by the preparer or taxpayer and may require the declaration to be furnished to the Franchise Tax Board upon request.

(b) Notwithstanding any other provision of law, any return, declaration, statement, or other document otherwise required to be signed that is filed in a traditional medium and captured using electronic imaging technology shall be deemed to be a valid original document upon reproduction to paper form by the Franchise Tax Board.

(c) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic technology in a form as required by the Franchise Tax Board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the Franchise Tax Board.

(d) "Electronic imaging technology" means a system of microphotography, optical disk, or reproduction by other technique that does not permit additions, deletions, or changes to the original document. The system may include, but is not limited to, any magnetic media or other machine readable form.

(e) "Traditional medium" means any return, declaration, statement, or other document required to be made pursuant to this article other than those made using electronic imaging technology.

(f) "Electronic technology" includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

SACRS LEGISLATIVE PROPOSAL

Title of Issue: Public Record Requests

Association: Los Angeles County Employees Retirement Association

Contact Person: Robert S. Van Der Volgen, Jr.

Phone No.: 626-564-2340

Fax No.: 626-564-2336

1. **Description of problem:** Existing Government Code Section 31532, applicable to retirement systems operating under the County Employees Retirement Law (CERL), provides that sworn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter or upon order of a court of competent jurisdiction, or upon written authorization by the member.

Several CERL systems, including LACERA, have received requests under the California Public Records Act (PRA) for names of retirees and their corresponding pension benefit amounts. LACERA and other systems denied these requests arguing that retirement allowances and benefit payments of individual members are confidential member records under Section 31532, and thus are exempt from disclosure under the PRA.

Subsequent litigation and recent court decisions are requiring compliance of requests to release information on the pensions of retirees. These decisions have relied heavily on the language of the CalPERS statute, but the courts have actually ordered broader disclosure than that provided for by the CalPERS statute.

2. **Recommended solution:** Amend existing Government Code Section 31532 to provide authority to CERL systems to respond to public records requests on member benefits with the same limitations provided in the CalPERS statute. Using similar language to existing Government Code Section 20230 which is applicable to CalPERS is proposed.
3. **Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?** If enacted, the proposed legislation would be applicable to all '37 Act systems.
4. **Do you anticipate that the proposed legislation would create any major problems, such as conflicting with Proposition 162 or creating a problem with any of the other 19 SACRS retirement associations?** No.
5. **Who will support or oppose this proposed change in law?** Retiree groups may be opposed.

6. **Who will be available from your association to testify before the legislature?**
Robert S. Van Der Volgen Jr., Chief Counsel, LACERA.

**Proposal for Amending County Employees Retirement Law
Regarding Release of Information Due to Public Record Requests**

Amend Government Code Section 31532

31532. Sworn statements and individual records of members shall be confidential and shall not be disclosed to anyone except insofar as may be necessary for the administration of this chapter or upon order of a court of competent jurisdiction, or upon written authorization by the member.

The gross amount of any benefit or any refund of a contribution due to a member or beneficiary is not confidential and may be released upon request to the board. The board may seek reimbursement for reasonable administrative expenses incurred when providing that information.

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20230. Data filed by any member or beneficiary with the board is confidential, and no individual record shall be divulged by any official or employee having access to it to any person other than the member to whom the information relates or his or her authorized representative, the contracting agency or school district by which he or she is employed, any state department or agency, or the university. The information shall be used by the board for the sole purpose of carrying into effect the provisions of this part. Any information that is requested for retirement purposes by any public agency shall be treated as confidential by the agency.

The gross amount of any benefit or any refund of a PERS contribution due to a member or beneficiary is not confidential and may be released upon request to the board.

The board may seek reimbursement for reasonable administrative expenses incurred when providing that information. Except as provided by this section, no member's, beneficiary's or annuitant's address, home telephone number, or other personal information shall be released.

For purposes of this section, "authorized representative" includes the spouse or beneficiary of a member when no contrary appointment has been made and when, in the opinion of the board, the member is prevented from appointing an authorized representative because of mental or physical incapacity or death.

YEAR 2012 SACRS LEGISLATIVE PLATFORM WORKSHEET

PLEASE COMPLETE AND RETURN BY AUGUST 26, 2011

Title of Issue: Legislation to Allow SACRS to Establish Group Dental Plan for Retirees and their Families

Association: SACRS Board of Directors

Contact Person: Richard White, SACRS President, or Robert Palmer, SACRS Executive Director

Phone #: (949) 632-6548 (209) 483-0404

Please answer the following questions as fully as possible:

1. Description of issue.
In 2006, SACRS was successful in seeking legislation to create a group vision plan for retirees in systems where there was no vision plan benefits available for retirees. That program has become very successful for those retirees eligible and interested in a group vision plan.

At the Spring SACRS Conference, a number of retirees approached the SACRS Executive Director to look at the feasibility of establishing a dental plan for retirees along similar lines as the vision plan. A survey was conducted and responses were received from eight SACRS systems. If a dental program were to be established, approximately 12,800 retirees and their families could participate in a group dental plan.

In May, we met with representatives of the California Dental Association about the possible design of such a plan.

Attached is a proposed retiree dental plan design that could provide dental coverage and well as be economically feasible to maintain.

2. Recommended solution.
It is the recommendation of the SACRS Board of Directors that SACRS introduce legislation to create a group dental program for retirees and their families.

3. Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers.

Add Government Code Section 31699:

31698. Citation of Article

This article shall be known and may be cited as the County Retirement System Dental Care Program.

31699.1 Retired members; Enrollment

A member who retires from a county retirement system covered by this chapter may enroll in a dental care program offered pursuant to this article subject to meeting the eligibility requirements established for the program.

31699.2 Payment of Premiums

Each retired member that elects to participate in the program shall be solely responsible for the payment of premiums.

31699.3 Benefits in addition to any other benefits under chapter

The benefits in this article are in addition to any other benefits provided in this chapter.

31699.4 Contract with a third-party administrator regarding dental care to retired member, survivors, and eligible dependents

The sponsor of the dental care program may contract with a third-party administrator to provide dental care to the retired member, his or her survivors, and his or her eligible dependents.

4. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?

The intent of the legislation is to pull together as many retirees as possible in order to maximize benefits and reduce costs.

5. Do you anticipate that the proposed legislation would create any major problems, such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations?

None, similar legislation was introduced for retiree vision care in 2006.

6. Who will support or oppose this proposed change in the law?

Support: SACRS systems

Opposition: Possible opposition from vendors that already provide unique dental benefits to some of the SACRS system retirees.

Mail your legislative proposals to:

Jim Lites
Schott & Lites Advocates, LLC
1510 14th Street
Sacramento, CA 95814
Fax (916) 447-4947 Phone (916) 444-7158
E-mail: jlites@schottlites.com

Each board operating under Article 3 (commencing with Section 31520) shall adopt a policy for providing education for board members. The policy will at minimum:

- (a) Identify appropriate topics for board member education. For purposes of this section, a trustee education policy that includes education in any of the following topics will be deemed to comply with this requirement:
 - a. fiduciary responsibilities,
 - b. ethics,
 - c. pension fund investments and investment program management,
 - d. actuarial matters,
 - e. pension funding,
 - f. benefits administration,
 - g. disability evaluation,
 - h. fair hearings,
 - i. pension fund governance and,
 - j. new trustee orientation.
- (b) Establish a means for determining the programs, training or educational sessions that qualify as trustee education. For purposes of this subsection, educational seminars sponsored by state or national public pension fund organizations, and seminars sponsored by accredited academic institutions will be deemed to meet qualifying trustee education requirements.
- (c) Require that all board members receive a minimum of twenty-four (24) hours of trustee education, within the first two years of assuming office, and for every subsequent two year period the board member continues to hold membership on the board.
- (d) Require each board to maintain a record of board member compliance with the trustee education policy. The policy and an annual report on board member compliance with the policy will be placed on the website of the retirement system.

YEAR 2012 SACRS LEGISLATIVE PLATFORM WORKSHEET

PLEASE COMPLETE AND RETURN BY AUGUST 26, 2011

Title of Issue: Clarification that GC Section 31720.5 is a rebuttable assumption
Association: Mendocino County Employees' Retirement Association
Contact Person: Jim Andersen, Retirement Administrator
Phone #: 707-463-4329
Fax #: 707-467-6472

Please answer the following questions as fully as possible:

1. Description of issue. Pellerin v KCERA created a rebuttable assumption for heart illnesses under GC Section 31720.5. The Section has not been changed, and the IRS has not issued a general PLR.
2. Recommended solution. Add language that this is a rebuttable assumption.
3. Specific language that you would like changed in, or added to, '37 Act Law, and suggested code section numbers. GC Section 31720.5. "Notwithstanding any other provision of this Section, "heart trouble" is a rebuttable assumption when evaluating a member's application for a Service Connected Disability Retirement.
4. Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association? Impacts all systems. Addresses the issue while IRS review of the 1937 Act is underway.
5. Do you anticipate that the proposed legislation would create any major problems, such as conflicting with Proposition 162 or create a problem with any of the other 19 SACRS retirement associations? None that I am aware of.
6. Who will support or oppose this proposed change in the law? Support from retirement systems and sponsors, possible opposition from police and fire unions.
7. Who will be available from your association to testify before the Legislature? Jim Andersen, Retirement Administrator or Tony Graham, Retirement Attorney.

Mail your legislative proposals to:

Jim Lites
Schott & Lites Advocates, LLC
1510 14th Street
Sacramento, CA 95814
Fax (916) 447-4947 Phone (916) 444-7158
E-mail: jlites@schottlites.com

SACRS LEGISLATIVE PROPOSAL

Title of Issue: Correction of Errors or Omissions

Association: Los Angeles County Employees Retirement Association

Contact Person: Robert S. Van Der Volgen, Jr.

Phone No.: 626-564-2340

Fax No.: 626-564-2336

1. **Description of problem:** There is no provision within the '37 Act that addresses the correction of errors or omissions at the administrative level. Government Code Section 20160 and 20164 gives the PERS Board of Administration the authority and the statutory framework to correct errors and omissions.
2. **Recommended solution:** Repeal current Government Code Section 31539 and add new Sections 31539 and 31539.5 to the '37 Act to govern the correction of errors and omissions by mirroring the above referenced code sections applicable to PERS. The proposed Section 31539 mirrors PERL Section 20164. The proposed Section 31539.5 mirrors PERL Section 20160.
3. **Why should the proposed legislation be sponsored by SACRS rather than by your individual retirement association?** If enacted, the proposed legislation would be beneficial to all '37 Act systems.
4. **Do you anticipate that the proposed legislation would create any major problems, such as conflicting with Proposition 162 or creating a problem with any of the other 19 SACRS retirement associations?** No.
5. **Who will support or oppose this proposed change in law?** Unknown at this time. Employee groups had concerns with prior efforts by SACRS to add provisions to the '37 Act to address the correction of errors and omissions.
6. **Who will be available from your association to testify before the legislature?** Robert S. Van Der Volgen Jr., Chief Counsel, LACERA.

**Proposal for Amending Retirement Law to Provide for the
Correction of Errors or Omissions by County Retirement Systems**

Section 31539 of the Government Code is repealed.

Section 31539 is added to the Government Code, to read:

31539. (a) The obligations of the retirement system to its members continue throughout their respective memberships, and the obligations of the retirement system to and in respect to retired members continue throughout the lives of the respective retired members, and thereafter until all obligations to their respective beneficiaries under optional settlements have been discharged. The obligations of the county or district to the retirement system in respect to members employed by them, respectively, continue throughout the memberships of the respective members, and the obligations of the county or district to the retirement system in respect to retired members formerly employed by them, respectively, continue until all of the obligations of the retirement system in respect to those retired members, respectively, have been discharged. The obligations of any member to the retirement system continue throughout his or her membership, and thereafter until all of the obligations of the retirement system to or in respect to him or her have been discharged.

(b) For the purposes of payments into or out of the retirement fund for adjustment of errors or omissions, the period of limitation of actions shall be three years, and shall be applied as follows:

(1) In cases in which the retirement system makes an erroneous payment to a member or beneficiary, the system's right to collect shall expire three years from the date of payment.

(2) In cases in which the retirement system owes money to a member or beneficiary, the period of limitations shall not apply.

(c) Notwithstanding subdivision (b), in cases in which payment is erroneous because of the death of the retired member or beneficiary or because of the remarriage of the beneficiary, the period of limitation shall be 10 years and that period shall commence with the discovery of the erroneous payment.

(d) Notwithstanding subdivision (b), where any payment has been made as a result of fraudulent reports for compensation made, or caused to be made, by a member for his or her own benefit, the period of limitation shall be 10 years and that period shall commence either from the date of payment or upon discovery of the fraudulent reporting, whichever date is later.

(e) The board shall determine the applicability of the period of limitations in any case, and its determination with respect to the running of any period of limitation shall be conclusive and binding for purposes of correcting the error or omission.

Section 31539.5 is added to the Government Code, to read:

31539.5. (a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, if all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the county or district, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 31539.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.

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20164. (a) The obligations of this system to its members continue throughout their respective memberships, and the obligations of this system to and in respect to retired members continue throughout the lives of the respective retired members, and thereafter until all obligations to their respective beneficiaries under optional settlements have been discharged. The obligations of the state and contracting agencies to this system in respect to members employed by them, respectively, continue throughout the memberships of the respective members, and the obligations of the state and contracting agencies to this system in respect to retired members formerly employed by them, respectively, continue until all of the obligations of this system in respect to those retired members, respectively, have been discharged. The obligations of any member to this system continue throughout his or her membership, and thereafter until all of the obligations of this system to or in respect to him or her have been discharged.

(b) For the purposes of payments into or out of the retirement fund for adjustment of errors or omissions, whether pursuant to Section 20160, 20163, or 20532, or otherwise, the period of limitation of actions shall be three years, and shall be applied as follows:

(1) In cases where this system makes an erroneous payment to a member or beneficiary, this system's right to collect shall expire three years from the date of payment.

(2) In cases where this system owes money to a member or beneficiary, the period of limitations shall not apply.

(c) Notwithstanding subdivision (b), in cases where payment is erroneous because of the death of the retired member or beneficiary or because of the remarriage of the beneficiary, the period of limitation shall be 10 years and shall commence with the discovery of the erroneous payment.

(d) Notwithstanding subdivision (b), where any payment has been made as a result of fraudulent reports for compensation made, or caused to be made, by a member for his or her own benefit, the period of limitation shall be 10 years and that period shall commence either from the date of payment or upon discovery of the fraudulent reporting, whichever date is later.

(e) The board shall determine the applicability of the period of limitations in any case, and its determination with respect to the running of any period of limitation shall be conclusive and binding for purposes of correcting the error or omission.

CURRENTLY IN PERL

20160. (a) Subject to subdivisions (c) and (d), the board may, in its discretion and upon any terms it deems just, correct the errors or omissions of any active or retired member, or any beneficiary of an active or retired member, provided that all of the following facts exist:

(1) The request, claim, or demand to correct the error or omission is made by the party seeking correction within a reasonable time after discovery of the right to make the correction, which in no case shall exceed six months after discovery of this right.

(2) The error or omission was the result of mistake, inadvertence, surprise, or excusable neglect, as each of those terms is used in Section 473 of the Code of Civil Procedure.

(3) The correction will not provide the party seeking correction with a status, right, or obligation not otherwise available under this part.

Failure by a member or beneficiary to make the inquiry that would be made by a reasonable person in like or similar circumstances does not constitute an "error or omission" correctable under this section.

(b) Subject to subdivisions (c) and (d), the board shall correct all actions taken as a result of errors or omissions of the university, any contracting agency, any state agency or department, or this system.

(c) The duty and power of the board to correct mistakes, as provided in this section, shall terminate upon the expiration of obligations of this system to the party seeking correction of the error or omission, as those obligations are defined by Section 20164.

(d) The party seeking correction of an error or omission pursuant to this section has the burden of presenting documentation or other evidence to the board establishing the right to correction pursuant to subdivisions (a) and (b).

(e) Corrections of errors or omissions pursuant to this section shall be such that the status, rights, and obligations of all parties described in subdivisions (a) and (b) are adjusted to be the same that they would have been if the act that would have been taken, but for the error or omission, was taken at the proper time. However, notwithstanding any of the other provisions of this section, corrections made pursuant to this section shall adjust the status, rights, and obligations of all parties described in subdivisions (a) and (b) as of the time that the correction actually takes place if the board finds any of the following:

(1) That the correction cannot be performed in a retroactive manner.

(2) That even if the correction can be performed in a retroactive manner, the status, rights, and obligations of all of the parties described in subdivisions (a) and (b) cannot be adjusted to be the same that they would have been if the error or omission had not occurred.

(3) That the purposes of this part will not be effectuated if the correction is performed in a retroactive manner.