

# CONTRA COSTA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

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October 30, 2012

The Board of Retirement met in special session at 8:30 a.m. on Tuesday, October 30, 2012 in the Ballroom at the Crowne Plaza Hotel, 45 John Glenn Drive, Concord, CA.

Present: Debora Allen, Terry Buck, Richard Cabral, John Gioia, Brian Hast, Jerry Holcombe, Sharon Naramore, John Phillips, Gabe Rodrigues, Jerry Telles, Maria Theresa Viramontes and Russell Watts

Absent: None

Staff: Marilyn Leedom, Retirement Chief Executive Officer; Kurt Schneider, Retirement Deputy Chief Executive Officer; Timothy Price, Retirement Chief Investment Officer; Karen Levy, General Counsel; and Vickie Kaplan, Retirement Accounting Manager

Outside Professional Support: Representing:  
Harvey Leiderman Reed Smith LLP

## Other Attendees:

Karen Davis	Contra Costa County Employees' Retirement Association (CCCERA) Staff
Christina Dunn	CCCERA Staff
Jessica Huffman	CCCERA Staff
Charice Jimenez	CCCERA Staff
Son Lu	CCCERA Staff
Nannette Mendoza	CCCERA Staff
Ruchelee Durbin	CCCERA Staff
Kelli Ingersoll	CCCERA Staff
Rhonda Jones	CCCERA Staff
Joelle Luhn	CCCERA Staff
Justine Rossini	CCCERA Staff

PLEASE SEE SIGN-IN SHEET FOR ADDITIONAL ATTENDEES

## CLOSED SESSION

The Board moved into closed session pursuant to Govt. Code Section 54956.9(b).

The Board moved into open session.

1. It was **M/S/C** to release the legal opinion from Reed Smith, LLP regarding the Impact of Assembly Bill 197 on Board Policy re Pensionable Compensation to the public. (Yes: Allen, Buck, Cabral, Gioia, Hast, Phillips, Telles, Viramontes and Watts)

## 2. Pledge of Allegiance

Viramontes led all in the *Pledge of Allegiance*.

Viramontes read the following statement:

### "NOTICE OF PERSONAL FINANCIAL INTEREST"

"The following members of the Board of Retirement have personal financial interest in the matters before the Board at this meeting, by reason of their being active members

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in the Contra Costa County Employees' Retirement Association (CCCERA) system: Terry Buck, Richard Cabral, John Gioia, Brian Hast, Gabe Rodrigues and Russell Watts. The following senior staff members of CCCERA have personal financial interests in the matters before the Board at this meeting by reason of their being active members of CCCERA: Marilyn Leedom, CEO; Kurt Schneider, Deputy CEO; Timothy Price, CIO; Karen Levy, General Counsel; and Vickie Kaplan, Accounting Manager. All of these individuals' interests are indistinguishable from the interests of the other active members of the system and they need not recuse themselves from these deliberations."

### 3. Public Comment

No members of the public offered comment at this time.

### 4. Educational presentation on changes to Government Code Section 31461 (AB 197)

Viramontes stated that AB 197 appears not to change the retirement allowances of CCCERA members who have already retired.

Levy reported on AB 197 and how CCCERA currently includes terminal pay in calculating retirement allowances. Levy referred to a slide show prepared by CCCERA for this presentation. She noted that handouts of the slideshow are available. Levy reported that in September 2012, the legislature passed and the Governor signed into law AB 197, legislation amending the County Employees Retirement Law of 1937, the main body of statutes that governs CCCERA. AB 197 amended the definition of compensation earnable in the '37 Act.

Levy explained how CCCERA calculates members' retirement allowances, using a formula that contains a "final average salary" factor. The "final average salary" factor in retirement calculation depends on what is included in "compensation earnable". She noted that it is up to the CCCERA Board of Retirement to determine whether the compensation paid to a CCCERA member by an employer is "compensation earnable" i.e., included in the pension calculation.

Levy discussed AB 197 and the way in which this legislation changed the definition of "compensation earnable" in Sec. 31461 of the Govt. Code. She noted that under the amended definition, compensation earnable does not include, in any case, payments for unused vacation and other types of leave, in an amount that exceeds that which may be earned and payable in each twelve month period during the final average salary period, regardless of when it is reported or paid. It also excludes from compensation earnable payments made at the termination of employment, except those payments that do not exceed what is earned and payable in each twelve month period during the final average salary period, regardless of when it is reported or paid.

She described the process the Board has taken to study the changes mandated by AB 197. She went through examples illustrating CCCERA's current implementation of the Retirement Board's policy on "Determining Which Pay Items Are 'Compensation' For

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Retirement Purposes." She explained the next few slides illustrating how vacation or other leave cash outs are being included in retirement calculations. She discussed how AB 197 would affect this determination on retirements on or after January 1, 2013.

Levy noted the changes mandated in AB 197 would apply to current CCCERA members except those with a CCCERA membership date of January 1, 2011 or after, pursuant to the Board of Retirement action taken on March 10, 2010. She also noted that new CCCERA members under PEPR are subject to a different provision, Government Code Section 7522.34, which excludes both termination pay and "sell backs" (cash outs).

Levy noted that for all CCCERA members, unused sick leave counts as service credit at termination under Govt. Code Section 31641.01. Because this is not a cash payment to the employee, but rather, service credit, this item is not impacted by the change mandated in AB 197.

Viramontes then opened the floor to comments from the public. Sixteen individuals addressed the Board. Most speakers were current members who opposed making changes to the current method of calculating compensation for retirement purposes.

### 5. Implementation of changes to Government Code Section 31461 (AB 197)

Leiderman reviewed his memo regarding the Impact of Assembly Bill 197 on Board Policy re Pensionable Compensation. He explained the legal responsibility and authority the Board of Retirement has in applying AB 197. He noted with the passing of AB 197 the legislation is providing instruction to the Board of Retirement and this instruction must be followed. To depart from the instruction of the legislature could expose the system, its employers and its members not only to taxation on contributions made into the system and all investment income earned on those contributions, but to severe penalties and interest as well. He advised the Board that on and after January 1, 2013, the Board may no longer include cash-outs for accrued leave in pensionable compensation that exceed the amount that was both earned and payable to the member in cash during each twelve months of the member's "final compensation" period, unless and until otherwise instructed by a court of competent jurisdiction.

The Board discussed in length the effects of AB 197 for current members. The Board noted the changes in AB 197 are not changes the Board initiated but rather changes that have been mandated by current legislation. Several Board members expressed their disagreement with the new legislation.

It was **M/S/C** directing staff to implement the changes to compensation earnable as outlined by AB 197. (Yes: Allen, Buck, Gioia, Hast, Phillips, Viramontes and Watts, No: Cabral and Telles)

### CLOSED SESSION

The Board moved into closed session pursuant to Govt. Code Section 54956.9(b).

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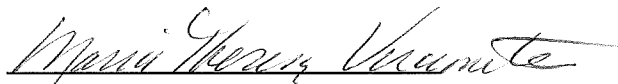
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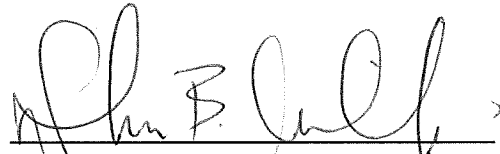
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The Board moved into open session.

There was no reportable action out of closed session.

It was **M/S/C** to adjourn the meeting. (Yes: Allen, Buck, Cabral, Gioia, Hast, Phillips, Telles, Viramontes and Watts)

  
Maria Theresa Viramontes, Chairman

  
John Phillips, Secretary