

MEMO

Date: October 17, 2012
To: CCCERA Board of Retirement
From: Marilyn Leedom, Chief Executive Officer
Subject: SACRS Legislative Platform

The SACRS Legislative Committee has reviewed 3 legislative proposals for consideration as SACRS-sponsored bills for the 2013 legislative session. Attached are all three proposals and the Committee's recommendations.

The items below will be placed before the body for consideration at the Friday business meeting at the November SACRS Conference.

ITEMS RECOMMENDED BY THE COMMITTEE FOR SACRS SPONSORSHIP

LACERA #1Telephone Transactions

LACERA #2Disclosure of Real Estate Investments

SAN JOAQUIN #1...Alternative Investment Disclosure Rules

SACRS LEGISLATIVE PROPOSAL

Title of Issue: Telephone Transactions

Association: Los Angeles County Employees Retirement Association

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

Phone No.: 626-564-2340

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1. **Description of problem:** Effective January 1, 2013, a county retirement system may adopt, at their election, regulations allowing for the use and acceptance of a member's digital 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.

While many members are computer literate, there are many who currently do not have access to or choose not to perform transactions over the web. Additionally, some members need assistance navigating through difficult transactions and are seeking help by telephone.

Allowing members to perform transactions over the telephone with the same force and effect as a manual signature not only results in greater service delivery to system members, but also increases efficiency and reduces costs to the systems' administration. Procedures adequate to protect the systems and members, including method(s) to validate and authenticate the member's identity and the permanent retention of the recorded communication, would be approved by each respective board.

2. **Recommended solution:** Amend existing Government Code Section 31527 of the County Employees Retirement Law (CERL) to allow county retirement systems to adopt, at their election, regulations allowing for the secure processing of member requests by telephone with the same force and effect as a manual signature.
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?** Unknown.

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

Existing Government Code Section 31527 is amended to read:

31527. In its regulations, the board may include the following provisions:

(a) From what warrants deductions of members' contributions shall be made.

(b) For a period of time longer than one year during which a member may redeposit in the retirement fund an amount equal to all of the accumulated normal contributions that he or she has withdrawn, plus regular interest thereon from the date of return to service.

(c) For a period of time longer than one year during which a member brought within the field of membership may pay into the retirement fund the amount equal to the contributions he or she would have made plus interest, if he or she had been a member from the date of its organization, or from the date of his or her entrance into service, whichever is later.

(d) For a withdrawal charge against a member who withdraws his or her accumulated contributions. The withdrawal charge shall not exceed the interest credited to the member subsequent to the effective date of the regulation.

(e) For the exemption or exclusion from membership as a peace officer member or as a safety member or from membership altogether, in the discretion of the board, of persons whose tenure is temporary, seasonal, intermittent, or for part time only, or persons whose compensation is fixed at a rate by the day or hour.

(f) For the periodic physical examination, at county expense, of safety members.

(g) The amount of additional deductions from the salaries or wages of members pursuant to Article 15.5 (commencing with Section 31841) or Article 16 (commencing with Section 31861). Such a provision may be adopted in anticipation of, and prior to Article 15.5 (commencing with Section 31841) or Article 16 (commencing with Section 31861) becoming operative in the particular county.

(h) The day upon which each person becomes a member of the association if it is to be other than the first day of the calendar month after his or her entrance into service. However, that day shall be no later than 12 weeks after his or her entrance into service, or the day upon which the member terminates service credited by the association, and that the day shall be no earlier than 12 weeks prior to the member's termination from employment.

(i) Notwithstanding any other law, for the use and acceptance of a document requiring a signature that is submitted by a member using an electronic signature, if the document and electronic signature are submitted using technology the board deems sufficient to ensure its integrity, security, and authenticity. A document submitted pursuant to the regulation shall be given the same force as a signed, valid original document.

(j) Notwithstanding any other law, for member authorization of transactions affecting the member's account via recorded telephone communications, provided procedures adequate to protect the system and members, including method(s) to validate and

authenticate the member's identity and the permanent retention of the recorded communication, are approved by the board.

SACRS LEGISLATIVE PROPOSAL

OCT 24 2012

AGENDA ITEM

4/b.

Title of Issue: Disclosure of Real Estate Investments

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:** The California Public Records Act (CPRA) provides for inspection and/or disclosure of governmental records to the public upon request, unless exempted by law.

In balancing the public's right to access public records with the recognized individual right of privacy and the need for public agencies to be able to competently perform their duties, the Legislature has established certain categories of records which may be exempt from public disclosure under Government Code Sections 6254 and 6275 et seq.

In addition, the CPRA allows an agency with the discretion to claim an exemption from public disclosure for records, which do not qualify for a specific exemption, if "the public interest served by not disclosing the record clearly outweighs the public interest served by disclosure of the record."

Existing Government Code Section 6254.26 provides that "alternative investments" in which public investment funds invest are exempt from disclosure, unless the information has already been publicly released by the keeper of the information. As defined under this section, "alternative investment" includes investments in a private equity fund, venture fund, hedge fund, or absolute return fund. However, this definition does not include real estate investments.

LACERA's Investment staff believes that real estate investments should be added to the list of alternative investments exempt from public disclosure. Many real estate investments share the same elements of market sensitivity as private equity transactions. Indeed, disclosure of certain material terms of these investments could put the investment at a competitive disadvantage and hinder or reduce return on investment. By including real estate in the present alternative investment exemption, the public would be given access to information necessary to monitor fund performance with reduced risk of impeding return.

2. **Recommended solution:** Amend Government Code Section 6254.26 to include non-publicly traded real estate investments.

In addition, a minor technical change to Section 6254.26(a)(4) is proposed to provide consistency within the statute.

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 California pension systems, including 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?** Public agencies with investments in real estate are likely to support this. We may also expect support from real estate investment interests and opposition from public access groups such as the Newspaper Publishers.
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 California Public Records Act
to Include Real Estate Investments as Exemption**

Existing Government Code Section 6254.26 is amended to read:

6254.26. (a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

- (1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.
- (2) Quarterly and annual financial statements of alternative investment vehicles.
- (3) Meeting materials of alternative investment vehicles.
- (4) Records containing information regarding the portfolio positions in which alternative investment ~~funds~~vehicles invest.
- (5) Capital call and distribution notices.
- (6) Alternative investment agreements and all related documents.

(b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:

- (1) The name, address, and vintage year of each alternative investment vehicle.
- (2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.
- (3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.
- (4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.
- (5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.
- (6) The net internal rate of return of each alternative investment vehicle since inception.
- (7) The investment multiple of each alternative investment vehicle since inception.
- (8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.

(9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.

(c) For purposes of this section, the following definitions shall apply:

(1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund, or non-publicly traded direct or indirect real estate investments.

(2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies or non-publicly traded real estate.

(3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.

(4) "Public investment fund" means any public pension or retirement system, and any public endowment or foundation.

YEAR 2013 SACRS LEGISLATIVE PLATFORM WORKSHEET

MEETING DATE

OCT 24 2012

AGENDA ITEM

4.C

Title of Issue: SJCERA #1 - Alternative Investments and Public Disclosure

Association: San Joaquin County Employees' Retirement Association

Contact Person: Annette St. Urbain, CEO

Phone #: (209) 468-2163

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1. Description of issues.

The Ralph M. Brown Act (California Government Code sections 54950-54963) generally requires that deliberations and actions of public local agencies be conducted in an open forum. The Brown Act also specifies exemptions allowing certain matters to be discussed and acted upon by a local agency in closed session.

The California Public Records Act, or CPRA, (Government Code sections 6250-6276.48) generally requires that records of public agencies be available for inspection and copying by the public. The CPRA also specifies exemptions allowing certain types of records or information to be withheld from disclosure under the CPRA.

Issue 1:

Subdivision (a) of Section 54957.5 of the Brown Act states the general rule that, despite any protections offered under the CPRA, agendas of public meetings and any other writings distributed to a majority of the members of a legislative body of a local agency in connection with an open session become subject to disclosure under CPRA. This subdivision then provides that this section of the Brown Act does not apply to any writing exempt from public disclosure under specified sections of the CPRA. The list of exceptions does not include 6254.26 of the CPRA, which exempts from disclosure specified records regarding alternative investments in which a public investment fund has invested.

SJCERA proposes that the failure to include in Section 54957.5 (a) of the Brown Act a reference to Section 6254.26 of the CPRA is likely to have been an oversight, rather than a deliberate policy choice by the Legislature.

The effect of the inconsistency in current law is that while certain information regarding a board of retirement's alternative investments is exempt from disclosure under the CPRA, if the information is provided to a majority of board members in connection with periodic reporting or due diligence reviews as part of an open session, that same information becomes subject to disclosure under the Brown Act.

Issue 2:

Section 54956.81 of the Brown Act allows a local agency that invests pension funds to hold a closed session to consider the **purchase or sale** of particular, specific pension fund investments. With regard to alternative investments, it is common for boards of retirement, as limited partner investors, to consider and act on amendments to limited partnership agreements quite some time after the board's initial decision to "purchase" or invest in the alternative investment vehicle was made in closed session. Subdivision (a) of Section 6254.26 of the CPRA specifies the alternative investments records that are not subject to disclosure, including alternative investment agreements and all related documents.

A board of retirement should have the authority to hold a closed session to consider information regarding its alternative investments that is exempt from public disclosure under the CPRA.

2. Recommended solution.

Issue 1:

Add a reference to CPRA section 6254.26 to the list of code sections specified in Section 54957.5(a) of the Brown Act to correct this oversight and ensure that information regarding a board of retirement's alternative investments that is exempt from disclosure under the CPRA would also be exempt from disclosure under the Brown Act.

Issue 2:

Amend Section 54956.81 of the Brown Act to authorize a local agency to hold a closed session to consider actions regarding alternative investments that relate to documents or information that is exempt from disclosure as specified in CPRA Section 6254.26 (a).

3. Specific statutory language that you would like changed or added.

Please see attached.

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

The Brown Act and the CPRA apply to all SACRS member systems.

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?

No.

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

All public agencies subject to these provisions that have alternative investments would likely support the proposed changes.

Issue 1:

If failure to include a reference to CPRA Section 6254.26 was, or is perceived as, a deliberate policy choice rather than an oversight, there could be opposition to this proposed change, most likely from the newspaper publishers.

Issue 2:

Allowing public local agencies to hold a closed session to consider information regarding alternative investments that is exempt from disclosure under the CPRA would correct an inconsistency in current law. To the extent this is perceived as an infringement on the public's access to the conduct of the people's business in an open forum, there could be opposition to this proposed change, most likely from the newspaper publishers.

7. Who will be available from your association to testify before the Legislature?

Annette St. Urbain, CEO

Amend Government Code Section 54957.5 (a) to read:

54957.5. (a) Notwithstanding Section 6255 or any other provisions of law, agendas of public meetings and any other writings, when distributed to all, or a majority of all, of the members of a legislative body of a local agency by any person in connection with a matter subject to discussion or consideration at an open meeting of the body, are public records subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), and shall be made available upon request without delay. However, this section shall not include any writing exempt from public disclosure under Section 6253.5, 6254, 6254.3, 6254.7, 6254.15, 6254.16, ~~or~~ 6254.22, **or 6254.26.**

Amend Government Code Section 54956.81 to read:

54956.81. Notwithstanding any other provision of this chapter, a legislative body of a local agency that invests pension funds may hold a closed session to consider the purchase or sale of particular, specific pension fund investments **or the information specified in subdivision (a) of Section 6254.26.** All investment transaction decisions made during the closed session shall be made by rollcall vote entered into the minutes of the closed session as provided in subdivision (a) of Section 54957.2.

CPRA Section 6254.26 - Current Statute (Included for Reference Only)

6254.26. (a) Notwithstanding any provision of this chapter or other law, the following records regarding alternative investments in which public investment funds invest shall not be subject to disclosure pursuant to this chapter, unless the information has already been publicly released by the keeper of the information:

- (1) Due diligence materials that are proprietary to the public investment fund or the alternative investment vehicle.
- (2) Quarterly and annual financial statements of alternative investment vehicles.
- (3) Meeting materials of alternative investment vehicles.
- (4) Records containing information regarding the portfolio positions in which alternative investment funds invest.

- (5) Capital call and distribution notices.

- (6) Alternative investment agreements and all related documents.

(b) Notwithstanding subdivision (a), the following information contained in records described in subdivision (a) regarding alternative investments in which public investment funds invest shall be subject to disclosure pursuant to this chapter and shall not be considered a trade secret exempt from disclosure:

- (1) The name, address, and vintage year of each alternative investment vehicle.
- (2) The dollar amount of the commitment made to each alternative investment vehicle by the public investment fund since inception.
- (3) The dollar amount of cash contributions made by the public investment fund to each alternative investment vehicle since inception.
- (4) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund from each alternative investment vehicle.
- (5) The dollar amount, on a fiscal yearend basis, of cash distributions received by the public investment fund plus remaining value of partnership assets attributable to the public investment fund's investment in each alternative investment vehicle.

- (6) The net internal rate of return of each alternative investment vehicle since inception.
 - (7) The investment multiple of each alternative investment vehicle since inception.
 - (8) The dollar amount of the total management fees and costs paid on an annual fiscal yearend basis, by the public investment fund to each alternative investment vehicle.
 - (9) The dollar amount of cash profit received by public investment funds from each alternative investment vehicle on a fiscal year-end basis.
- (c) For purposes of this section, the following definitions shall apply:
- (1) "Alternative investment" means an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.
 - (2) "Alternative investment vehicle" means the limited partnership, limited liability company, or similar legal structure through which the public investment fund invests in portfolio companies.
 - (3) "Portfolio positions" means individual portfolio investments made by the alternative investment vehicles.
 - (4) "Public investment fund" means any public pension or retirement system, and any public endowment or foundation.