

Comparing League Policy and the Conference Committee Report on Public Employee Pensions (Conference Report)

AB 340 (Furutani) was amended Aug. 28, 2012 and is intended to implement comprehensive pension reform through the enactment of the California Employees' Pension Reform Act of 2013 (PEPRA) as well as other statutory changes.

This proposal applies to all public employers and pension plans on or after Jan. 1, 2013 with the exception of the University of California, as well as charter cities and charter counties that do not participate in the California Public Employees' Retirement System (CalPERS) or the 37' Act System including the cities of Los Angeles, San Francisco, Fresno, San Diego, and San Jose. The proposal also excludes any retirement plan approved by the voters of any entity before Jan. 1, 2013.

Questions have been raised about whether the pension reform proposal applies to current or new employees. The short answer is that most of the provisions in the package apply to new employees while some of the provisions apply to current employees. Please see the attached Addendum A for that information.

The following is a comparison of League policy that was adopted by the League board of directors in July 2011. The Conference Report addresses the issues listed in the chart below.

Pension Proposal	Does League Policy and Conference Report Align?
Cap pensionable income	X No
Increased retirement ages	✓ Yes
New cost sharing authority	✓ Yes
Prohibit pension spiking/ 3-yr. avg.	✓ Yes
Eliminate double dipping	✓ Yes
Base retirement on regular, recurring pay	✓ Yes
Forfeit pension benefits upon felony conviction	X No
Eliminate airtime	✓ Yes
Eliminate retroactive benefit increases	✓ Yes
Eliminate pension holidays	✓ Yes

1. PENSIONABLE COMPENSATION CAP & HYBRID

Proposal		Align?
Pension Reform Package	<p>Establishes a cap on the amount of compensation that can be used to calculate a retirement benefit for all new members of a public retirement system equal to the Social Security wage index limit (\$110,100) for employees who participate in Social Security or 120% of that limit (\$132,120) if they do not participate in Social Security. [GC. Sect. 7522.10 (c)]</p> <p>Adjustments to the cap are required annually based on changes to the Consumer Price Index (CPI) for all Urban Consumers. [GC. Sect. 7522.10 (d)(1)]</p> <p>Authorizes the Legislature to modify the CPI prospectively. [GC. Sect.7522.10 (d)(2)]</p> <p>Prohibits employers from offering a defined benefit or any combination of defined benefits, including a privately provided defined benefit, on compensation in excess of the new cap. [GC. Sect.7522.10 (e)]</p> <p>Authorizes employers to make contributions to a defined contribution plan for employees so long as the plan and contributions meet federal limits and requirements. [GC. Sect. 7522.10 (f)(1)]</p> <p>Except that employer contributions made to a defined contribution plan for an employee above the cap is limited. [GC. Sect. 7522.10 (g)] *See attached Addendum B for further explanation.</p> <p>Provides that a contribution made by an employer to an employee's deferred contribution plan is not a vested right. [GC. Sect. 7522.10 (f)(2)]</p> <p>Prohibits employers from providing new members with a supplemental defined benefit plan. [GC. Sect. 7522.18 (a)(b)]</p> <p>Prohibits employers from making contributions for new members to any qualified retirement plan on pensionable compensation above the amount specified in Section 401(a)(17) of Title 26 of the United State Code (\$250,000). [GC. Sect. 7522.42 (a)]</p>	

League Policy	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 contribution plan. A defined contribution plan should integrate with a defined benefit plan not substitute for it.	
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Differences	<p>League policy and the Conference Report diverge considerably on this particular issue. League policy suggests that employees should be guaranteed a percentage of their income when they retire provided by a defined benefit plan and that any defined benefit plan should be substituted with a professionally managed defined contribution plan.</p> <p>The Conference Report does not guarantee a percentage of income replacement. Instead it caps pensionable compensation for the defined benefit and does not provide a guaranteed hybrid option. However, it permits employers to provide defined contribution plans above the new defined benefit structure. The plan also seems to limit employer contributions that can be made to a defined contribution plan for highly compensated employees.</p>	
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2. INCREASE RETIREMENT AGE & NEW FORMULAS

Proposal		Align?
Pension Reform Package	<p>Increases retirement ages for new members.</p> <p>The formula option for miscellaneous members will be 2% at 62. The formula will be adjusted to encourage longevity. The formula will be adjusted to a maximum retirement factor of 2.5% at age 67. [GC. Sect. 7522.20 (a)]</p> <p>There will be three formula options offered to safety members including: 2% at 57; 2.5% at 57; and 2.7% at 57. [GC. Sect. 7522.25 (a)(b)(c)(d)]</p>	
League Policy	<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> <p>Repeal SB 400/AB 616 formulas returning to more sustainable PERS benefit formulas.</p>	

	Provide a broader range of formula choices with lower benefit local options for all types of member classes.	
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Differences	While League policy and the Conference Report do not align exactly on this issue, League policy overall supports an increase in retirement age including repeal of the SB400/AB 616 formulas.
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3. COST SHARING & EMPLOYER PICK-UP

Proposal		Align?
Pension Reform Package	<p>Requires new members to pay at least 50% of normal cost and prohibits employers from paying this contribution on the employee's behalf. [GC. Sect. 7522.30 (c)]</p> <p>Provides that new members can pay more than 50% of the normal cost if the increase has been agreed to in collective bargaining and under the following conditions:</p> <ul style="list-style-type: none"> (1) An employer is prohibited from contributing a greater rate to the plan for non-represented, managerial, or supervisory employees than the employer contributes to other public employees. (2) An employer can only increase employee contribution rates if agreed to in a memorandum of understanding (MOU) that has been collectively bargained. (3) An employer cannot use impasse procedures to implement greater cost sharing above the 50% of normal cost. <p>[GC. Sect.7522.30 (e)(1)(2)(3)]</p> <p>Authorizes employers to require (subject to good faith bargaining) after Jan. 1, 2018 current employees to pay at least 50% of the normal cost so long as the employee contribution does not exceed 8% for miscellaneous, 12% for police and fire, and 11% for all other local safety members. [GC. Sect. 20516.5 (b)(c)]</p> <p>Authorizes employers and employees to agree to share the costs of the employer contribution and prohibits the use of impasse procedures from being used to implement a cost sharing arrangement on any contribution amount above what is required in law. [GC.Sect. 20516 (a)(b)]</p> <p>Member cost sharing under GC. Sect. 20516 may be bargained on a unit-by-unit basis if agreed to in an MOU. [GC. Sect. 20516(c)]</p>	

League Policy	<p>Give employers greater flexibility at the collective bargaining table to get at current costs of employee pensions including unfunded liabilities. Allow for greater cost sharing mechanisms in the PERL that do not currently exist.</p> <p>Require 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)</p>	
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Differences	<p>No major differences. League policy and the Conference Report align closely on this issue. The Conference Report gives local employers greater flexibility to share costs with current and future employees.</p> <p>First, after Jan.1, 2018 local employers can require current employees to pay 50% of the normal cost subject to limits and collective bargaining. The report also gives employers greater flexibility to bargain with current employees over paying a portion of the employer contribution. This strengthens the statutory framework for cost sharing arrangements between employers and employees on sharing a portion of the employer's costs.</p> <p>Second, the plan requires that new employees pay one-half of the normal cost.</p> <p>Third, the measure prohibits employer pick-up of the new member's normal cost contribution.</p>	
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4. PROHIBIT PENSION SPIKING

Proposal		Align?
Pension Reform Package	<p>Requires for new members that final compensation shall be calculated on the highest average annual pensionable compensation earned by a member during a period of at least 36-consecutive months. [GC. Sect. 7522.32 (a)]</p> <p>This is otherwise known as the 3-year average.</p>	
League Policy	<p>Base final retirement salary on three highest paid years worked.</p>	

Differences	No major differences.
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5. RESTRICTIONS ON RETIREES

Proposal		Align?
Pension Reform Package	<p>Requires newly retired persons to sit out for at least 180 days before returning to work for an employer in the same retirement system that which they receive a retirement allowance. [GC. Sect. 7522.56 (f)]</p> <p>An exception can be made if the governing body certifies that the nature of the employment and that the appointment is necessary to fill a critically needed position and the 180 days has not yet passed. This also requires governing body approval in a properly noticed public meeting and cannot be placed on a consent calendar. [GC. Sect.7522.56 (f)(1)]</p> <p>This 180-day sit out rule does not apply to a public safety officer or firefighter. [GC. Sect. 7522.56 (f)(4)]</p> <p>Provides that a retiree that accepted a retirement incentive (e.g., handshake or cash incentive) upon retirement must sit out the 180 days and the exception cannot be used. [GC. Sect. 7522.56 (g)]</p>	
League Policy	Allow retired annuitants to work for CalPERS agencies under contract or appointment by a local agency	

Differences	League policy in this area has always been very broad to allow employers to use retired annuitants because in many cases it can be a cost saving measure. However, when several pension bills were being considered a year ago in the Legislature the proposal before us was an outright 6-month restriction. The proposal in the Conference Report represents a deal struck with CSAC and the League to allow local agencies to bring back retirees when a need was evident.
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6. BASE RETIREMENT ALLOWANCE ON REGULAR, RECURRING PAY

Proposal		Align?
Pension Reform Package	<p>Defines “pension compensation” for a new member of any public retirement system as the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to a publically available pay schedule. [GC. Sect.7522.34 (a)]</p> <p>Also provides that pension compensation does not include:</p> <ul style="list-style-type: none"> • compensation paid to enhance a retirement benefit; • compensation previously provided “in-kind” and converted to cash in the final comp period; • one-time or ad hoc payments; • terminal pay; • pay for unused sick leave or time off; • pay for work outside of normal hours; any employer provided allowance including uniform, housing, vehicle allowances; • pay for overtime, except planning overtime, extended duty workweek, or pay defined in federal labor code section 207(k) of Title 29 of the United States Code. [GC. Sect.7522.34 (c)(1-12)] 	
League Policy	<p>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.</p>	

Differences	No major differences.
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7. FORFEIT PENSION BENEFITS UPON FELONY CONVICTION

Proposal		Align?
Pension Reform Package	<p>Requires public officials and employees to forfeit pension benefits if they are convicted of a felony related to the performance of official duties, related to seeking an elected office or appointment, in connection with obtaining salary or pension benefits, or committed against a child who the official or employee has contact with as part of his or her official duties. [GC. Sect.</p>	

	<p>7522.72 (b)(1) and (2), (c)(1); GC. Sect. 7522.74 (b)(1) and (2), (c)(1)]</p> <p>Only pensions benefits earned or accrued after the earliest date of the commission of the felony are subject to forfeiture. Benefits earned or accrued prior to this date are not subject to forfeiture [GC sec. 7522.72(c); GC sec. 7522.74(c)]</p> <p>These provisions apply to employees hired both before and after January 1, 2013. [GC. Sect. 7522.72 (a); GC. Sect. 7522.74 (a)]</p>	
League Policy	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.	

Differences	Both the Conference report and League policy address felonies that arise in connection with fraudulently obtaining pension benefits. The report goes beyond this by including felonies committed in obtaining disability retirement or “other benefits”. The report further goes beyond the League policy and addresses felonies that arise out of or in the performance of one’s official duties, felonies in the pursuit of office or appointment, or felonies committed against children by employees who come in contact with the child as part of their official duties.
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8. ELIMINATE AIRTIME

Proposal		Align?
Pension Reform Package	Prohibits a public retirement system from allowing the purchase of unqualified service credit. [GC. Sect. 7522.46(a)]	
League Policy	Supports eliminating the purchase of “air time” (purchase of time not served)	

Differences	No major differences.
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9. PROHIBIT RETROACTIVE BENEFIT INCREASES

Proposal		Align?
Pension Reform Package	Requires that any retirement enhancements to formulas or benefits must occur prospectively and not retroactively. [GC. Sect. 7522.44]	

League Policy	Prohibit retroactive benefit increases.	
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Differences	No major differences.	
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10. PROHIBIT PENSION HOLIDAYS

Proposal		Align?
Pension Reform Package	<p>Prohibit all employers from suspending employer and/or employee contributions necessary to fund annual pension normal costs. [GC. Sect. 7522.52(a)]</p> <p>Allows a public retirement system to suspend contributions under limited circumstances:</p> <ul style="list-style-type: none"> • The plan is funded more than 120% • The excess earnings could result in disqualification of plans tax deferred status • The board finds that additional contributions would conflict with its fiduciary responsibility <p>[GC. Sect. 7522.52 (b)(1)(2)(3)]</p>	
League Policy	Prohibit employers and employees from taking contribution "holidays."	

Differences	No major differences.	
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Which proposals apply to current and new employees?

The new benefit plan required by this proposal applies to public employees who are “new members.” A New member includes:

- 1) An individual who has never been a member of any public retirement system prior to Jan. 1, 2013.
- 2) An individual who moved between retirement systems with more than a 6-month break in service.
- 3) An individual who moved between public employers within a retirement system after more than a 6-month break in service.

Provides that individuals who are employed by any public employer before Jan. 1, 2013 and who become employed by another reciprocal public employer after the reforms proposed in SB 340 take effect will be offered the retirement plan given to employees by the subsequent employer before SB 340 takes effect.

Proposal	Current Employees	New Members
Pension Cap		✓
Increase Retirement Age		✓
Cost Sharing	✓	✓
3-Yr Average		✓
Retiree Restrictions/6-month sit out	✓	✓
Final Comp Reg. Pay		✓
Felony Forfeiture		✓
Eliminate Airtime	✓	✓
No Retroactive Increases		✓
No Pension Holidays	✓	✓

Addendum B

Maximum Overall Cap on Combined Defined Benefit and Defined Contribution Payments to Employees Over \$110,000

GC 7522.10 (g) in AB 340 (p. 12 – 13) reads as follows:

(g) Any employer contributions to any employee defined contribution plan above the pensionable compensation limits in subdivision (c) shall not, when combined with the employer's contribution to the employee's retirement benefits below the compensation limit, exceed the employer's contribution level, as a percentage of pay, required to fund the retirement benefits of employees with income below the compensation limits.

Examples of what this means:

Employer's Contribution as % of Salary	10%	15%	20%
To Employees Below 110,000 DB Pension Cap			
Maximum Contribution to \$250,000 employee			
(D.B.) First \$110,000 salary	\$11,000	\$16,500	\$22,000
(D.C.) Next \$140,000 salary	<u>\$14,000</u>	<u>\$21,000</u>	<u>\$28,000*</u>
TOTAL	\$25,000	\$37,500	\$50,000

**Current federal limit on employer contributions to D.C. Plan: \$50,000*