



Contra  
Costa  
County

To: Board of Supervisors  
From: LEGISLATION COMMITTEE  
Date: November 17, 2015

Subject: Legislative Policy Referral Regarding Pension Reform

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**RECOMMENDATION(S):**

ACCEPT the report from the Legislation Committee on the referral to the Committee regarding legislative policy related to pension reform.

**FISCAL IMPACT:**

No fiscal impact from receiving this report. The matter of pension benefits has fiscal impacts that are detailed in the attached documents.

**BACKGROUND:**

At its July 28, 2015 meeting, the Board of Supervisors considered and approved the response to Civil Grand Jury Report No. 1503, "Time for a New Look at Pension Costs," and referred the matter of pension legislative policy to the Legislation Committee. The Board Order is *Attachment A*. The Grand Jury Report No. 1503 is *Attachment B*. The response to the report is *Attachment C*.

The Civil Grand Jury Report No. 1503 examines the cost of pension and retiree health benefit obligations on the County and contends that "...the County has not challenged the prevailing assumption that California law prohibits it from negotiating reductions in pension

☒ APPROVE

☐ OTHER

☐ RECOMMENDATION OF CNTY ADMINISTRATOR

☒ RECOMMENDATION OF BOARD COMMITTEE

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Action of Board On: **11/17/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

**VOTE OF SUPERVISORS**

AYE: John Gioia, District I Supervisor  
Candace Andersen, District II Supervisor  
Mary N. Piepho, District III Supervisor  
Karen Mitchoff, District IV Supervisor  
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: November 17, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: June McHuen, Deputy

Contact: L. DeLaney,  
925-335-1097

cc:

benefits for its employees who entered service before 2013. We believe that assumption is in error... The Board of Supervisors should without delay seek such a change or clarification in California law." (p. 1,

## BACKGROUND: (CONT'D)

B)

The Report attempts to address the question "Why have the County's retirement obligations grown so large?," and suggests as one of its reasons "... the County has not negotiated reductions in future pension benefits for current employees through collective bargaining because of obstacles arising from highly inflexible court decisions unique to California and a minority of other states." (p. 7, *B*)

The Report states that "...the California Supreme Court has issued rulings that severely restrict the ability of the County to make changes to benefits not yet earned under its pension plans." It cites Allen vs. City of Long Beach, decided by the Supreme Court in 1955, as an example of a case that removed tools that would have allowed the County to manage and adjust its pension obligations. "That case held that not only was a public employer prohibited from terminating a pension plan for current employees; it must also assure that any alterations in the pension plan "which results in disadvantage to employees should be accompanied by comparable new advantages." This meant that after the Allen case public employers in California were on a one-way legal elevator that only went up. In contrast to wage and other employee benefits, any pension benefit granted to a current employee could not be reduced in future periods even though such benefits had not yet been earned." (p. 10, *B*)

The Report further posit that public agencies in California have adopted the view that the "vested pension contract right the Court found in the Allen case could not be challenged by collective bargaining." However, the Report questions that assumption suggesting that "collective bargaining [the Meyers-Milias-Brown Act was passed in 1968] did not exist for public employees at the time the Allen case was decided [in 1955]." (p. 11, *B*)

The Report also contends that the California Supreme Court based its decision in the Allen case on the *contracts clause* of both the California and the U.S. Constitutions, but "nothing in that prohibition [that prohibits California from passing laws that impair contract obligations] prevents the party to whom the contract obligation is owed from agreeing voluntarily to amend or waive that obligation." The Report suggests that "Federal courts would have the final say on whether the U.S. Constitution extends the same protection to future, unearned pension rights that the California Supreme Court found in its Allen decision." (p. 11, *B*)

The referral of these legislative and legal policy issues was considered at the October 1, 2015 meeting of the Legislation Committee (comprised of Supervisor Mitchoff, in Supervisor Glover's absence), receiving information and testimony from Mr. Michael Moore, a member of the 2015-16 Civil Grand Jury and an attorney. Supervisor Mitchoff indicated that the Board of Supervisors appreciated receiving the Grand Jury's recommendations. Supervisors have negotiated pension benefits in the past with

employee unions, however, with the California Public Employees' Pension Reform Act (PEPRA) in effect, it was Supervisor Mitchoff's opinion that there was no incentive for pre-2013 employees to negotiate on pension changes. The Committee directed staff to return the item to the full Board of Supervisors for consideration, with no recommendation from the Committee to pursue a legislative or legal remedy at this time.

Mr. Michael Moore has requested time to present additional information to the Board and will be in attendance at the meeting.

### **Pension Reform Efforts**

While these legal questions remain unresolved, California's public employee pensions could potentially be decided at the ballot box. A group of pension reform advocates, led by former San Jose Mayor Chuck Reed and former San Diego Councilman Carl DeMaio, had filed a statewide initiative for the 2016 ballot, called the "Voter Empowerment Act of 2016," which would have amended the state constitution to require voter approval of any new defined benefit retirement plans or pension increases and place a 50 percent cap on government subsidies of retirement benefits provided to government employees. The proposed state constitutional amendment would have applied to all public employee pensions throughout the state. However, it was withdrawn from circulation and rewritten by its two sponsors.

The new approach to a pension reform initiative comes in the wake of allegations of bias against Attorney General Kamala Harris in crafting the official title and summary for the initiative. Attorney General's summary stated "Eliminates constitutional protections for vested pension and retiree health care benefits for current public employees." The sponsors contend that their initiative stated the government "shall not enhance the pension benefits of any employee in a defined benefit pension plan unless the voters of that jurisdiction approve," and that "shall not enhance" is not the same thing as "eliminates," which has a more negative connotation.

From the Sacramento Bee:

"The idea, DeMaio said, was to see whether Democratic Attorney General Kamala Harris used what they consider "poison pill" language to describe the new measures as she has three previous pension change proposals since 2011. If she does, DeMaio said, "we think she'll be giving us the evidence we need" to successfully sue Harris for unfairly skewing her description of pension initiatives.

The attorney general's office writes the short title and summary of all ballot initiative proposals. The language is important because it appears on petition materials used to qualify them for the ballot, often shaping voters' first impression of an initiative's contents. Perhaps even more important, the wording affects potential contributors' willingness to underwrite a campaign. ...

Harris, who is running for U.S. Senate, has been accused of employing poll-tested language about previous pension measures to make them as politically unpalatable as possible. In 2014, Reed took Harris to court, alleging she described a pension measure he proposed with "false and misleading words and phrases which argue for the measure's defeat, is argumentative, and creates prejudice against the measure, rather than merely informing voters of its chief purposes and points ..."

The courts ruled against Reed. Harris' representatives have said throughout that she has fairly characterized the pension measures that came across her desk. They say claims of bias are commonly leveled at attorneys general writing titles and summaries. [\[1\]](#)"

The new initiative effort comes after courts have struck down recent attempts to address the pension problem. Last year, voters in Ventura County collected thousands of signatures for a measure that would have allowed the County to opt out of the current defined-benefit system and replace it with a 401(k)-type system, but a county judge ruled that residents could not vote to leave a pension system created by the state.

In 2012, San Jose voters overwhelmingly approved a measure that would have given city employees a choice between a less-generous pension or staying in the current system but contributing a larger portion of their salaries toward paying down the pension debt. A Santa Clara County Superior Court Judge overturned that measure for violating the "vested rights" of public employees.

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[\[1\]](#) Oct. 2, 2015, by Jon Ortiz.

<http://www.sacbee.com/news/politics-government/the-state-worker/article37401864.html>

#### CONSEQUENCE OF NEGATIVE ACTION:

If the Board of Supervisors does not accept this report, it will not have received the input of the Legislation Committee on the referral.

#### CLERK'S ADDENDUM

***Speakers: David Van Etten, 2014-2015 Grand Juror; Michael Moore, 2014-2015 Grand Juror.***

#### ATTACHMENTS

Attachment A

Attachment B

Attachment C