

SANTA BARBARA COUNTY BOARD AGENDA LETTER



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 2/28/05
Department Name: CAO
Department No.: 012
Agenda Date: 3/8/05
Placement: Departmental
Estimate Time: 30 minutes
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Michael F. Brown
County Administrator

STAFF CONTACT: Jim Laponis, Deputy County Administrator
Lori Norton, Analyst, X 3421

SUBJECT: Legislative Program Committee Recommendations

Recommendations:

That the Board of Supervisors considers the following recommendations forwarded from the Legislative Program Committee:

- A. Reaffirm support for the County's State Legislative Priorities (Attachment 1) as amended by the Committee to include the following:

Additional Priorities:

1. Seek opportunities to support legislation to enhance the County's and State's economic and business climate.
2. Seek opportunities to fund alternative transportation projects.
3. Support the efforts of the County Sheriff to seek an author for legislation to fund the unfunded costs of the Michael Jackson trial.

Amended Priorities:

4. Amend existing priority to seek an author for legislation to receive 20% share of state tidelands oil royalty revenue from leases within the County by expand the permissible uses of funding to include alternative transportation projects.

Delete Priorities:

5. Delete priority of seeking an author for legislation to permit local governments to impose a fee on the sale, transfer, or conveyance of property for purposes of funding affordable/workforce housing.

- B. Reaffirm support for the County's Federal Legislative Priorities (Attachment 2) as amended to include the following additional priorities in the Emerging Opportunities - Monitoring and Reporting issue area: funding for alternative transportation, and for identified costs arising from County services provided to undocumented individuals (similar to State Criminal Alien Assistance Program

(SCAAP) funding but also for identified costs in the area of public health, safety, law, justice, social programs, etc.

- C. Receive a copy of CSAC's DRAFT Guiding Principles for 2005-2006 Pension Reform and consider the following recommendations (Attachment 3):
1. Endorse the DRAFT Guiding Principles without judgment on specific reform proposals.
 2. Request a presentation before the Board of Supervisors on the DRAFT Guiding Principles and specific reform proposals.
 3. Authorize the County Administrator to form a project team to prepare an analysis of CSAC's DRAFT Guiding Principles and Specific Reform Proposals to include an evaluation of the cost, savings, and efficacy of each.
- D. Support AB 192 (Tran) Tort Claims Act. AB 192 would limit the liability of public entities in actions for injury to \$250,000 per individual or \$500,000 per occurrence (Attachment 4)

Alignment with Board Strategic Plan:

The recommendations are primarily aligned with Goal No. 1. An Efficient Government Able to Respond Effectively to the Needs of the Community; and Goal No. 4. A Community that is Economically Vital and Sustainable.

Executive Summary and Discussion:

On February 22, 2005, the Legislative Program Committee ("Committee") considered, and recommended the Board of Supervisors consider the recommendations listed above. The 2005 Committee membership is as follows: Second District Supervisor Susan Rose, Third District Supervisor Brooks Firestone, County Administrator Michael F. Brown, Auditor-Controller Robert Geis, County Counsel Shane Stark. All members of the Committee were present at the meeting. Recommendations A, B, and D were unanimously supported by the Committee. Member Geis opposed Recommendation C based on his concern that the DRAFT Guiding Principles and Specific Reform Proposals seek to address problems that do not exist in our County's Retirement system.

Following is a brief summary of the issues to be considered by the Board. Additional information is included as attachments to this document.

State Legislative Priorities for 2005

Historically, the Board of Supervisors has adopted State Legislative Priorities which provide broad guidance to staff and the County's advocates on issues of importance to the County. As noted on February 22, the Priorities are not all inclusive. As individual bills are introduced in the legislature, County staff will review them for their potential impact on the County, and as appropriate will bring them to the attention of the Committee and Board of Supervisors for consideration.

In January, the Legislative Program Committee was asked to review and reaffirm the County's State Priorities. The Committee partially endorsed the priorities in January, but requested additional time for

review and input. On February 22, 2005, the Committee recommended the Board of Supervisors reaffirm the County's State Legislative Priorities as amended by the Committee. The amendments are identified in Recommendation A and are noted in Attachment 1 with additions, amendments, and deletions are noted via underline or strikethrough.

Federal Legislative Priorities for 2005

The Committee also considered and reaffirmed support for the County's Federal Legislative Priorities as amended by the Committee. The amendments are identified in Recommendation B and are noted in (Attachment 2).

CSAC's DRAFT Guiding Principles for 2005-2006 Pension Reform

The Committee considered the California State Association of Counties (CSACs) DRAFT Guiding Principles for 2005-2006 Pension Reform. Members of the Committee stated a number of concerns— particularly that the Principles and Specific Reform Proposals seek to “fix” problems that do not exist in the County of Santa Barbara's Retirement System. At the conclusion of their discussion, the Committee generally endorsed the DRAFT Guiding Principles without judgment on specific reform proposals. Further, the Committee recommends that the Board of Supervisors request a presentation before the Board of Supervisors on the DRAFT Guiding Principles and on the specific reform proposals, and authorize the County Administrator to form a project team to prepare an analysis of the DRAFT Guiding Principles and Specific Reform Proposals to include an evaluation of the cost, savings, and efficacy of each.

CSACs Government Finance and Operations Policy Committee is scheduled to meet on March 16 at the CSAC Legislative Conference to discuss the DRAFT Guiding Principles and will be making a recommendation to the CSAC Executive Committee on March 17. Supervisor Gray serves as the County's representative on the CSAC Executive Committee and has requested Board direction on the DRAFT Guiding Principles. Further, CSACs DRAFT Guiding Principles have been included in spot bill form— SB 891 (Ashburn): A spot bill is being drafted relating to the 1937 Act Retirement System calling for cost reduction and containment, increased predictability of cost for employee and employer, equitable sharing of cost and risks between employee and employer, greater retirement system accountability, and elimination of abuse, which is one of approximately 20 public pension reform bills introduced this legislative session.

Also of interest to the Board, on February 28, the Attorney General approved for circulation (signature gathering) a voter initiative titled, “The California Public Employee Pension Reform Act”, a copy of which is provided in Attachment 3. The California Public Employee Pension Reform Act would prohibit all public agencies from having defined benefit retirement plans for employees hired on and after July 1, 2007.

Other Issues of Interest

Senator Maldonado has introduced legislation SB 827 which is a “placeholder” bill for the County to work with the Senator to recover costs incurred by the County in bringing Michael Jackson to trial. Pursuant to the State Legislative Priorities, reimbursement is being for all costs except normal salaries and expenses, incurred by the District Attorney for investigation and prosecution, by the Sheriff for investigation, by the Public Defender or court-appointed attorneys for investigation and defense, and all other costs, except normal salaries and expenses, incurred by the County in connection with the trial itself, which includes extraordinary expenses for services such as witness fees and expenses, court-appointed expert witnesses, reporter fees, and costs in preparing transcripts. Trial costs would also include all pretrials, hearings, and

postconviction proceedings, if any. "Costs incurred by the county" do not include any costs paid by the superior court or for which the superior court is responsible. The Sheriff is working with Senator Maldonado regarding this matter.

Assembly member Nava has introduced legislation AB 164 which would relieve the County of its share of the cost resulting from the rainstorms, flooding and mudslides of December 2004 and January 2005. Under the Natural Disaster Assistance Act, once the President declares a federal disaster, the disaster assistance cost sharing ratio is as follows: Fed 75%, State 18.75%, Local 6.25%. Assembly member Nava's bill would amend the Government Code and Revenue & Taxation Code to have the State pick up the remaining 6.25% so that the local share would be 0 %.

Mandates and Service Levels:

The Legislative Program is not mandated and its service levels are discretionary.

Fiscal and Facilities Impacts:

Fiscal and facility impacts are discussed in relationship to individual recommendations as applicable.

C: Cliff Berg, Governmental Advocates
Ron Waterman, Waterman and Associates
Department Directors

Attachments

Memorandum

Date: February 28, 2005

To: Honorable Chair and Members of the Board of Supervisors

From: Lori Norton, Analyst

Subject: Legislative Program Committee's Recommended Federal Legislative Priorities for the 109th Congressional Session - 2005

CC: Jim Laponis, Deputy County Administrator



Background

Waterman and Associates has been retained by the County to provide Federal Advocacy Services in a maximum of 8 issues areas as follows:

- ◆ Comprehensive advocacy (either legislative, administrative, or federal grants / appropriations) on **up to five** issues or projects, and
- ◆ Monitoring and reporting on an additional **three** issues (or up to a total of eight combined advocacy and monitoring issues).

The Committee will note that this model differs from our state lobbying approach in which our state advocate (Cliff Berg, Governmental Advocates) pursues a broad range of issues on behalf of the County.

Waterman and Associates strongly recommends, and staff concurs, that to effectively participate in the federal arena, the County must prioritize and limit the number of federal issues we pursue. This will focus their/our time, energy, and resources in the most critical issue areas. However, if during the year our priorities change significantly, we have the flexibility to add or delete priorities without incurring additional cost, as long as we do not exceed a total of **eight** combined issues with up to **five** advocacy issues.

Identification of Issues and Recommended Priorities

In FY 03, staff solicited input from departments to identify federal issues of importance to the County. Once a list of issues was developed (Attachment A), staff worked with department representatives and Waterman and Associates to develop the list of recommended priorities contained within this report. The process of prioritizing the issues extends beyond an assessment of their relative importance, and includes an assessment of their exclusivity to Santa Barbara County, and our ability to effectively influence the outcome of each.

By way of example, CDBG Entitlement Status is considered both important and exclusive to the County; that is, if we do not advocate for it, no one will. Therefore, staff recommends it as an advocacy priority. On the other hand, although the proposal to end the moratorium on offshore oil drilling is of great importance to many members of our community, staff's perspective is that the national issues surrounding that decision are such that Santa Barbara County would have very limited influence. As such, staff recommends Waterman and Associates monitor and report on this

issue rather than advocate for it. This means we will participate in that dialogue if / when it occurs, but will not be the principal advocate.

Additionally, Board members have stated on several occasions that they hope our federal advocates will be able to assist us in the process of identifying and obtaining federal funding for county projects and programs. The potential to avail ourselves of federal funding is another criteria we used to develop our list of recommended priorities.

Following are the priorities recommended by the Legislative Program Committee:

Comprehensive Advocacy – Up to 5 Issue Areas

1. CDBG Entitlement Status – Continue Advocacy

Santa Barbara County is seeking legislation to amend Title I of the National Housing and Community Development Act of 1974, to allow the County to be designated as an entitlement jurisdiction (Urban County). There would be no fiscal impact on the federal government. The provision, however, would allow the County to access roughly \$3.5 million of Community Development Block Grant and other HUD funds annually for affordable housing and related issues. Waterman's current advocacy has focused on working to obtain a legislative amendment to allow the County to gain entitlement status based on a number of factors, which have resulted in the County being just short of the required population of 200,000. In recognition of current circumstances related to Goleta being offered, and accepting CDBG Entitlement Status as a principal city, we may expand the Waterman's efforts to include exploring a regulatory means of obtaining CDBG Status "off cycle" if we are successful in increasing our population above the required threshold through a cooperative effort with another Entitlement community.

2. Lake Cachuma Surcharge Impacts – Continue Advocacy

Since 1953 the County of Santa Barbara has managed facilities at Lake Cachuma, providing a public regional recreational center under an agreement with the Bureau of Reclamation (Bureau) in the Department of the Interior. The Bureau has determined that to encourage the proliferation of steelhead trout, the level of Lake Cachuma shall be raised a minimum of three (3) feet. Raising the level of Lake Cachuma by three feet would inundate some County facilities, requiring their removal and rebuilding at an estimated cost of \$10 million. To date the County has worked diligently to secure over \$3.4 million in funds with a potential for an additional funding via State Proposition's 40 and 50. However, given the State of California's fiscal crisis, it is now unknown if and when State monies may be available. At this time it is critical that funding for phases of the relocation needs be obtained. This includes an immediate funding need of approximately \$5.2 million. It is however imperative that lead agencies i.e. Bureau of Reclamation and National Marine Fisheries be responsible for funding of impacts. Waterman and Associates is representing the County's interest by working with the Bureau of Reclamation on issues related to the surcharge and seeking federal funding for costs associated with the removal and rebuilding of the County's facilities, if the surcharge proceeds.

3. TEA-21 Project Funding – Continue Advocacy

Santa Barbara County has identified a number of transportation projects specific to Santa Barbara County that Waterman and Associates would continue to advocate for on our behalf. Projects include funding for capital needs such as road rehabilitation demonstration projects, bikeways, bridges, rail, and other transportation projects. This is an area where the Waterman's have successfully assisted us in communicating our needs, and are working

to obtain “earmarked funding” for Santa Barbara County for these types of capital projects. The current TEA-21 reauthorization bill contains requests for \$4.6 million, submitted by Congressman Gallegly, for reconstruction and deep-lift asphalt on various roads throughout the 24th District, and \$16 million, submitted by Congresswoman Capps, for Hollister Avenue Widening and Class II Bike lanes in the 23rd District.

4. CARA (Conservation and Reinvestment Act)/CIAP (Coastal Impact Assistance Program) – Continue Advocacy

Numerous bills have been introduced to allocate federal Outer Continental Shelf (OCS) revenues. Each one offers amendments to several laws that allocate revenue to states and U.S territories for environmental and recreational purposes. Important to Santa Barbara County, some of these pending bills promote impact assistance to coastal counties affected by OCS development. However, the formulae for distributing impact assistance to coastal counties does not meet the original objective of allocating a majority of impact assistance funds directly to counties adjacent to producing OCS leases. Waterman and Associates has successfully worked with staff, and a coalition of states, counties, and environmental groups to seek amendments to the allocation formulae in a manner that brings more federal OCS revenue to those counties most affected by OCS development. In 2005, the Waterman’s will continue to pursue the County’s interest of obtaining an equitable share of any allocation of OCS revenues.

Monitoring / Reporting Issues

1. Beach / Shore Erosion Projects - Continued Monitoring

The federal government has reduced federal funding for beach and shoreline erosion projects. Waterman and Associates would monitor discussion of funding for Beach and Shore projects and seek opportunities for Santa Barbara County to obtain federal funding for specific beach or shoreline erosion projects.

2. Emerging Opportunities – Continue Monitoring

Waterman and Associates would continue their effort to seek and alert the County identify of federal funding opportunities. ~~for Santa Barbara County with a priority on identifying any federal housing funding opportunities,~~ For 2005, the Board has identified the following priorities for emerging opportunities: funding for federal housing, alternative transportation, and for identified costs arising from services provided to undocumented individuals (similar to SCAAP funding but to include identified costs in the areas of public health, safety, law, justice, social programs, etc.). During the past year, the Waterman’s have identified two opportunities which the County has pursued: potential for funding for beach erosion projects through the Corps of Engineers, and a competitive grant opportunity offered through the Health and Human Service Department for funding mentoring programs for youths whose parents are incarcerated.

3. Indian Lands / Tribal Gaming – Continue Monitoring

Waterman and Associates has been monitoring two tribal-related bills that were introduced in Congress in 2003. S 578 would amend the Homeland Security Act of 2002, to elevate the status of Indian Tribes, for various purposes, to the equivalent or greater status as State governments. If passed, the bill would overturn numerous U.S. Supreme court rulings and contradicts the terms of most Indian treaties. In addition, the Waterman’s have been monitoring S 297, which would reform the federal acknowledgement process for

Indian Tribes and provide extensive resources to tribal governments. The County's primary interest in these areas is to balance the sovereign rights of Native Americans with the rights of local governments and the communities they represent. We would propose to have the Waterman's continue to monitor these bills and other Federal legislation, which may further expand the rights of Native Americans. Additionally, we would propose to have the Waterman's continue to monitor and report on Indian Lands Fee-to-Trust legislation, regulations, and specific proposals, which could impact Santa Barbara County.

4. BRAC (Base Realignment and Closure) – Reinstate Monitoring

The Federal Government continues to plan for a new round of base closures scheduled to begin in 2005. Vandenberg's role in the nation's missile defense was enhanced in December when President George W. Bush announced plans to house four operational ballistic missile interceptors there. (As proposed, there will be a total of 20 interceptors located in America, 16 at Fort Greely, Alaska in addition to the 4 to be located at Vandenberg.) Waterman and Associates has been monitoring the progress of BRAC discussions to ensure the County is informed of any discussion to include Vandenberg on a list of bases to be realigned or closed. Although it appears very unlikely that Vandenberg would be included in realignment or closure plans, the process of identifying bases is political and if named, it would take tremendous time and resources to organize the type of coalition necessary to react to such a listing. As such, staff believes it prudent for the Waterman's to continue to monitor the BRAC process. In addition, in 2005, the County may want to increase our efforts to advocate Vandenberg as an alternative location for programs and activities to be moved from bases which are identified for realignment or closure.

Recommended Action on Other Issues

Emergency Operations Center Funding – Discontinue Advocacy

In 2002, Waterman and Associates was successful in assisting the Fire Department to obtain \$450,000 in FEMA Fire Grant funding. Last year, we were hoping to build upon this success by obtaining funding for a dedicated Emergency Operation Center. Santa Barbara County protects federal and state lands, we are first responders to oil spills, subject to earthquakes and other disasters, and we need additional resources to continue addressing growing life/safety demands. The County has been seeking funding for an Emergency Operations Center, which has been a State Legislative priority, for several years. The County continues to seek approximately \$3 million in building and equipment funding. However, Waterman and Associates has notified us that they recommend the County eliminate funding for the construction of an emergency operations center as an advocacy issue. Congress is very reluctant to fund construction projects for emergency operations and the funding account or program that would be most appropriate provides relatively few funds for such emergency-related activities. The Waterman's would continue to monitor opportunities for the County to seek funding for EOC equipment, which Congress is more likely to continue to fund.

It is important to note that Waterman and Associates understands the need for flexibility in our priorities. It is also understood that once resolution to an issue is achieved, we will substitute another issue. By way of example, if / when we obtain CDBG entitlement status, that priority will be eliminated and a new priority inserted.

Federal Issues of Statewide Importance to Counties

It is also important to note that Waterman and Associates represents the collective interest of all California Counties through their contract with the California State Association of Counties (CSAC). Although CSAC has not yet met to adopt their slate of issues, following is the proposed list to be considered by CSAC at its upcoming Executive Board meeting:

Advocacy

- ❖ Child Support Enforcement – Federal Waiver of Federal Penalty
- ❖ TEA-21 Reauthorization
- ❖ TANF Reauthorization – Welfare Reform
- ❖ State Criminal Alien Assistance Program (SCAAP)

Monitoring / Reporting

- ❖ Tribal Authority in relationship to Gaming
- ❖ Remote Sales Tax
- ❖ Local Law Enforcement Block Grants (LLEBG)
- ❖ Payment in Lieu of Taxes (PILT)

Mandates and Service Levels:

The Legislative Program is not mandated. However, each of the areas identified for advocacy or reporting is directly related to one or more of the County's strategic goals.

Federal Issues Identified:

- ❖ Community Development Block Grant Entitlement Status
- ❖ Conservation and Reinvestment Act (CARA)
- ❖ FEMA Fire Grants and Emergency Operations Center Funding
- ❖ TEA-21 Project Funding
- ❖ Base Realignment and Closure (BRAC)
- ❖ Offshore oil leases
- ❖ Beach/Shore Projects and the Gaviota Coast
- ❖ Indian Fee-to-Trust and Indian Gaming
- ❖ TANF Reauthorization
- ❖ State Criminal Alien Assistance Program (SCAAP)
- ❖ Channel Islands National Marine Sanctuary
- ❖ Endangered Species Protection Act
- ❖ Lompoc Federal Prison Expansion
- ❖ Child Support Penalties
- ❖ Nursing shortage and education issues
- ❖ Medicare Physician Fee Schedule
- ❖ Internet Sales Tax

Draft Guiding Principles for 2005-06 Pension Reform

In response to legislative, administrative, and initiative proposals early this year, CSAC staff has worked with a technical advisory group to develop proposed principles to guide our participation in discussions about reform of public pension systems. Our efforts have been guided by a firm belief that a legislative solution to pension reform is the best course to ensuring reform with clear cost-benefit outcomes for local government retirement systems and taxpayers.

This document has been prepared with the understanding that it remains a work in progress and should be flexible in order to accommodate CSAC's coalition-building efforts. Staff will continue to modify and refine this document as necessary, under the guidance of our technical advisors and the Government Finance and Operations Policy Committee.

Preamble

Public pension reform has garnered widespread interest and generated significant debate among policy leaders about the appropriate remedy for actual and perceived abuse, rising costs, and accountability to taxpayers. CSAC welcomes this discussion and approaches the concept of reform with the overarching goal of ensuring public trust in public pension systems, as well as maintaining a retirement benefit sufficient to assure recruitment and retention of a competent local government workforce. Proposed reforms should meet these broad goals, as well as CSAC's guiding principles.

The guiding principles and reform proposals are listed below and are intended to apply to new public employees hired after June 30, 2007 in both PERS and 1937 Act retirement systems.

Guiding Principles

- ❖ **ELIMINATE ABUSE**
Public pension systems provide an important public benefit by assisting public agencies to recruit and retain quality employees. Any fraud or abuse must be eliminated to ensure the public trust and preserve the overall public value of these systems.
- ❖ **REDUCE AND CONTAIN COSTS**
Public pension reform should provide for cost relief for government, public employees, and taxpayers.
- ❖ **INCREASE PREDICTABILITY OF COSTS AND BENEFITS FOR EMPLOYEE AND EMPLOYER**
Responsible financial planning requires predictability. Employers must be able to predict their financial obligations in future years. Employees should have the security of an appropriate and predictable level of income for their retirement after a career in public service.
- ❖ **STRENGTHEN LOCAL CONTROL TO DEVELOP PLANS WITH EQUITABLE SHARING OF COSTS AND RISKS BETWEEN EMPLOYEE AND EMPLOYER**
Equitable sharing of pension costs and risks promotes shared responsibility for the financial health of pension systems and reduces the incentive for either employees or employers to advocate changes that result in disproportionate costs to the other party, while diminishing the exclusive impact on employers for costs resulting from increases in unfunded liability.

- ❖ **INCREASE PENSION SYSTEM ACCOUNTABILITY**
Public pension systems boards have a constitutional duty to (a) protect administration of the system to ensure benefits are available to members and (b) minimize employer costs. The constitutional provisions and state statutes governing such boards should promote responsible financial management and discourage conflicts of interest.
- ❖ **PROTECT LOCAL CONTROL AND FLEXIBILITY**
Local elected officials should be able to develop pension systems that meet the needs of their workforce. A statewide mandated retirement system is not appropriate in all California communities.

Reform Proposals

The following proposals represent specific reforms that serve to promote the principles outlined above. Proposals that directly affect employee benefits are intended to apply only to employees hired after June 30, 2007.

- ❖ Restrict public safety retirement eligibility to only those groups of employees who must endanger their own physical safety to protect the public as a major component of their employment.
- ❖ Establish a formula cap for public safety at 2% at 50 and a formula cap of 2% at 60 for miscellaneous employees. The cost of any defined benefit or defined contribution retirement enhancements beyond the base pension formula must be paid in full by the employee for the duration of his/her employment unless the employer agrees to share not more than 50% of the cost.
- ❖ Require that "final compensation" be calculated using highest three-year average, as opposed to a single highest year.
- ❖ Provide local agencies the option to implement defined contribution retirement plans.
- ❖ Amend the County Employees Retirement Act to eliminate the cost of the *Ventura* court decision by removing factors outside direct salary in determining "final compensation."
- ❖ Limit application of pension formula increases to prospective service in order to avoid unfunded liability resulting from extension of benefits retroactively.
- ❖ Limit pension benefits to career employees by excluding from eligibility temporary employees and contract employees.
- ❖ Require that surplus excess earnings be used according to the following priorities: pay down unfunded liability, offset employer cost for Pension Obligation Bond (POB) debt service, and pay for benefits in effect as of January 1, 2006. Surplus excess earnings may not be used to pay for enhanced pension benefits.
- ❖ Stabilize contribution rates and promote cost predictability; for example, by requiring use of sound actuarial techniques for the multi-year "smoothing" of market gains and losses.
- ❖ Upon agreement, permit employers and employees to share responsibility for all retirement system costs, including unfunded liabilities.
- ❖ Retirement boards and arbiters should not have the authority to grant pension formula increases.
- ❖ Clarify the two-fold responsibility of retirement boards to (a) protect retirement system assets for the benefit of participants and (b) minimize employer contributions.
- ❖ Reform Industrial Disability Retirement (IDR) (see attachment).

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Note: These items continue to be reviewed and will be further clarified by additional discussion with our technical advisors under the direction of the GFO policy committee.

Attachment

Pension Reform Issues: Industrial Disability Retirement (IDR)

In response to IDR reform discussions, CSAC has traditionally supported the principle of provision of IDR to safety employees who are unable to continue their safety employment due to a bona fide job-connected disabling injury or illness. CSAC has also traditionally recognized that IDR can be extremely expensive, and that responsible reforms are warranted to limit the cost to truly legitimate claims. Possible reforms include, but are not limited to:

1. IDR should be discontinued for any period of time the disabled employee participates in similar work with another public agency.
2. Employees who qualify for both an IDR and a regular service retirement should be required to choose one or the other option, and the current practice of providing both benefits by tax sheltering 50% of the service retirement for such employees should be discontinued. This would not apply to other Workers' Compensation benefits for which the employee may be qualified.
3. A new and more precise definition of "safety employee" for purposes of qualification for safety retirement benefits should be designed to discourage continuing benefit creep. Such definition should not be so restrictive as to prevent promotion to positions in the same occupational series.
4. IDR benefits should be restricted to both safety employees and injuries or illnesses clearly linked to activities related to protecting the safety of the public (i.e. field or custodial activities). IDR should not be provided to safety employees disabled due to injuries common to non-safety employees.
5. Some disabling injuries and illnesses for safety employees are deemed to be "rebuttable presumptions" (including heart, cancer, pneumonia, meningitis, hernia, blood-borne pathogen, biochemical substances, and lower back). This is true for causation standards for PERS IDR, which is linked to Workers Compensation causation, and is true for 1937 Act Retirement systems for "blood-borne pathogens." This generally means that they are deemed job connected unless the employer can prove otherwise, unlike other injuries for which the employee must demonstrate at least a de minimus job nexus. All existing presumptive injuries should be reviewed and eliminated if they cannot meet a standard of reasonableness. Such a standard should include a determination that although specific causation may not be possible, there is a substantial likelihood that the origin of the illness or injury is job connected.
6. Public employers should have increased medical management of safety employees claiming temporary disability (prior to claiming IDR) including: employer right to initiate an IDR and avoid one year of Labor Code 4850 payments, and more aggressive opportunities for employers to offer alternative employment to injured workers. This reform would apply to 1937 Act employers and PERS employers where the employee is assigned to a rehabilitation program.
7. Labor Code 4850 benefits should be limited to one time for the same injury or cumulative trauma related to an injury already having received this benefit.
8. Separation of IDR funding from retirement funding. In large agencies in which one half of safety employee retirements are IDR, a new successful IDR claim makes no immediate impact on retirement funding and therefore is virtually invisible to fiscal controls. This encourages weak management of IDR claims. Dual funding and reporting for IDR and regular retirement benefit costs would increase scrutiny of this benefit. It should be noted, however, that conversion to a dual payment system would be initially complicated.
9. Change the 1937 Act job causation standard for IDR from "substantial" to "preponderance of evidence", and change the PERS job causation standard for IDR from a workers' compensation causation to "preponderance of evidence."

10. If some or all of the above cost saving reforms can be achieved, CSAC has previously expressed support for increased IDR benefits for specified employees who are totally disabled from any work (as opposed to occupationally disabled) as part of a package of reforms.

SA2005 RF0070



Faculty Association

An Independent Membership Organization of Faculty at the University of California, Los Angeles
P.O. Box 33336 Granada Hills, CA 91394-3336; Phone and FAX 818 341-8664; ucfa@earthlink.net; www.uclafaculty.org

Feb. 9, 2005

The Honorable Bill Lockyer
Attorney General, State of California
ATTN: Ms. Tricia Knight
Initiative Coordinator
1300 I Street, Suite 125
Sacramento, CA 94244-2550

RECEIVED
FEB 10 2005

Re: The California Public Employee Pension Reform Act

INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Dear Ms. Knight:

On behalf of the Faculty Association at UCLA, the proponent of this Initiative, I would like to take this opportunity to request that the Attorney General prepare a title and summary of the chief purpose and points of The California Public Employee Pension Reform Act, a copy of which is attached. The initiative text is (four) 4 pages in length.

Any correspondence regarding this initiative should be directed to Dwight Read, Chair, Faculty Association at UCLA, P.O. Box 33336, Granada Hills, CA 91394-3336 (phone and FAX 818 341-8664), and ucfa@earthlink.net.

I am a citizen of the United States. My residence address in California, at which I am registered to vote, is attached.

Thank you for your cooperation.

Sincerely,

Dwight Read
Chair, Faculty Association at UCLA

Attachments:
Cover Page – 1 page
Initiative Text – 4 pages
Confidential Voter Information – 1 page

SA2005RFO070

THE CALIFORNIA PUBLIC EMPLOYEE PENSION REFORM ACT

This initiative measure is submitted to the People of California in accordance with the provisions of Article II, Section 8 of the Constitution.

SECTION 1. Title.

This measure shall be known and cited as "The California Public Employee Pension Reform Act."

SEC. 2. Findings and Declarations.

The People of California hereby find and declare as follows:

- a) California's state and local governments face severe budget crisis because elected officials spend more than they receive in taxes. A fair and balanced approach to restoring long-term fiscal responsibility must include limiting the cost of government employee pensions which have grown dramatically in recent years, threatening the long-term investments California needs in education, infrastructure, health care and public safety.
- b) California has among the nation's most generous public pension plans, providing some employees with more than 100% of their final years' salary at age 50. During the past 20 years, most private employers have moved to defined contribution plans such as 401 (k) plans to limit costs, promote responsible budgeting and improve fiscal accountability.
- c) The struggle to meet the demands of generous pension plans negotiated by elected officials has increased state and local government debt by more than \$12 billion, leaving more than \$30 billion in additional unfunded costs for future retirees. Creating defined contribution plans for all state and local government employees as defined in subparagraph SEC. 4 (d) (3) will eliminate new unfunded liabilities.
- d) Under current law, existing state and local government employees cannot have their retirement plans changed by this Act. Promises made to all current public employee retirement system members will be kept under this Act. A switch from defined benefits to defined contributions plans will only affect employees hired by public agencies as defined in subparagraph SEC. 4 (d) (3) on or after July 1, 2007.
- e) In order to protect the investments California needs to improve the quality of life in the decades ahead, a limit on the amount of public agency contributions to defined contribution plans must be included in this Act. The limits established by this Act are consistent with employer contributions to 401 (k) plans most commonly found in the private sector with important adjustments for education and public safety employees.
- f) Unlike current government pension plans, defined contribution plans allow employees to enhance their credit standing, control their assets, move pension assets from one job to another, and pass along remaining funds to their heirs.

- g) Defined contribution plans will make government officials more accountable for spending public money; reduce the long-term cost of retirement plans; provide greater budget predictability; and help restore fiscal responsibility to state and local budgets.
- h) The University of California (UC), its laboratories, and its affiliates, are excluded from this Act and the California Public Employee Pension Plan that the Act establishes for several reasons:
 - 1. **Competitive Faculty Compensation.** The UC system has established itself in the upper ranks of all universities, public and private, by offering competitive salaries and benefits to attract and retain the best faculty in the nation. UC follows a state-approved formula that keeps UC faculty compensation in the middle position between 4 of the best private and 4 of the best public universities in the nation.
 - 2. **Independent Oversight of Benefit Plan.** The benefit structure of UC is unique among public agencies. UC and its pension plan are a public trust regulated by the independent Board of Regents whose members watch over the interests of both the University and the State of California which supports it. Because the Regents do not participate in the University of California Retirement Plan themselves, they can be relied upon to ensure that the Plan's assets and liabilities continue to be balanced and managed responsibly without burdening the state with future unfunded liability.

SEC. 3. Purpose and Intent.

(a) In enacting this measure, the people of the State of California intend to prohibit all public agencies as defined in subparagraph SEC. 4 (d) (3) from having defined benefit retirement plans for employees hired on and after July 1, 2007 and to authorize all such employees of public agencies as defined in subparagraph SEC. 4 (d) (3) to enroll only in a defined contribution plan. The people intend that commitments made to existing public employees enrolled in defined benefit plans be fully honored.

(b) This measure also establishes the California Public Employee Defined Contribution Plan, and limits the contributions which the employers of public agencies as defined in subparagraph SEC. 4 (d) (3) may make to such plans.

SEC. 4. Section 8 is added to Article XX of the Constitution to read:

Sec. 8. (a) The California Public Employee Defined Contribution Plan is hereby established.

(b) Notwithstanding any other provision of law or this Constitution, on and after July 1, 2007, any person hired as a new employee by a public agency as defined in subparagraph SEC. 4 (d) (3) may enroll only in a defined contribution plan of a public pension or retirement system, and shall not enroll in a defined benefit plan.

(c) On and after July 1, 2007, and before January 1, 2008, any active member of a defined benefit plan offered by any public agency as defined in subparagraph SEC. 4 (d) (3) may

transfer a sum equal to the net present value of that member's interest in the defined benefit plan to a defined contribution plan as defined in this section.

(d) As used in this section, the following terms apply:

(1) "Defined benefit plan" means a system providing a pension benefit determined by a formula based on age, service credit, and final salary.

(2) "Defined contribution plan" means a system providing a pension benefit that is equal to the combined employer and employee contributions plus interest and net investment earnings, less administrative expenses. A public agency may use one or more private third-party administrators to manage a defined contribution plan, provide investment vehicles and educate members and retirees on appropriate investment strategies.

(3) "Public agency" includes, but is not limited to, the State of California, and any city, city and county, or county, including a charter city or charter county, district, school district, California State University or other political subdivision or public entity of, or organized under the laws of, this State, or any department, instrumentality, or agency thereof except the University of California, its laboratories, and its affiliates, all of which are excluded from the California Public Employee Defined Contribution Plan.

SEC. 5. Title 18, commencing with section 99100, is added to the Government Code to read:

Title 18. California Public Employee Defined Contribution Plan

Chapter 1. General Provisions

99100(a) On and after July 1, 2007, a contribution of a public agency as defined in subparagraph SEC. 4 (d) (3) to a defined contribution plan shall not exceed 6 percent of an employee's base salary, which shall not include overtime, vacation or sick leave allowances, except that a public agency's contributions up to 9 percent of an employees base salary may be made for sworn police officers and full-time fire fighters. For employees not covered by the Federal Social Security Program a public agency may contribute up to an additional three percent of base salary.

(b) No public agency as defined in subparagraph SEC. 4 (d) (3) shall make a contribution to a defined contribution plan in excess of three percent of salary without a matching contribution from the employee, except in the case of sworn police officers and full time firefighters, that contribution may be 4.5 percent. A qualified matching contribution under this section shall be at least one dollar from the employee for every two dollars by the public agency, up to the limits established in subsection (a). Employees may make additional unmatched contributions to the limits established by federal law.

(c) With respect to any local public agency as defined in subparagraph SEC. 4 (d) (3) comprised of directly elected public officials, the limits imposed by subdivision (a) may be exceeded upon a vote of two-thirds of the electorate of that public agency.

(d) "Public Agency" as defined in subparagraph SEC. 4 (d) (3) and "Defined Contribution Plan" shall be as defined in Article XX, Section 8 of the Constitution.

SEC. 6. In the event that this measure and another measure or measures relating to retirement plans of public employees shall appear on the same statewide election ballot, the provisions of the other measures shall be deemed to be in conflict with this measure. In the event that this measure shall receive a greater number of affirmative votes, the provisions of this measure shall prevail in their entirety, and the provisions of the other measures shall be null and void.

SEC. 7. If any of the provisions of this act, or part thereof, is for any reason held to be invalid or unconstitutional, the remaining provisions shall not be affected, but shall remain in full force and effect, and to this end the provisions are severable,

SEC. 8. The statutory limits set forth in subdivision (a) of Government Code section 99 100 enacted by this measure may be amended only by two identical bills introduced in two successive sessions of the Legislature, each passed by three--quarters of the membership of both houses of the Legislature and each signed by the Governor.

AB 192 Assembly Bill - INTRODUCED

BILL NUMBER: AB 192 INTRODUCED
BILL TEXT

INTRODUCED BY Assembly Member Tran

JANUARY 27, 2005

An act to amend Section 830.6 of, and to add Section 815.1 to, the Government Code, relating to governmental tort liability.

LEGISLATIVE COUNSEL'S DIGEST

AB 192, as introduced, Tran. Tort Claims Act.

(1) The Governmental Tort Claims Act governs the tort liability and immunity of public entities and their officers and employees, claims and actions against public entities and their officers and employees, insurance indemnification, and the defense of public officers and employees. Among other things, the act provides that a public entity is not liable for an injury, except as otherwise provided by statute, whether the injury arises out of an act or omission of the public entity or a public employee or any other person.

This bill would limit the liability of public entities in actions for injury to \$250,000 per individual or \$500,000 per occurrence.

(2) The act provides that neither a public entity nor a public employee is liable for an injury caused by the plan or design for the construction of, or an improvement to, public property where the plan or design has been approved in advance by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give approval, or where the plan or design is prepared in conformity with standards previously approved, if the court makes specified determinations.

This bill would provide that the applicability of that provision is a question of law for the court to determine.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 815.1 is added to the Government Code , to read:

815.1. Notwithstanding any other law, in no action for injury shall the liability of a public entity exceed two hundred fifty thousand dollars (\$250,000) per individual or five hundred thousand dollars (\$500,000) per occurrence.

SEC. 2. Section 830.6 of the Government Code is amended to read:

830.6. (a) Neither a public entity nor a public employee is liable under this chapter for an injury caused by the plan or design of a construction of, or an improvement to, public property where ~~such~~ the plan or design has been approved in advance of the construction or improvement by the legislative body of the public entity or by some other body or employee exercising discretionary authority to give ~~such~~ approval or where ~~such~~ the plan or design is prepared in conformity with standards previously ~~so~~ approved, if the trial or appellate court determines that there is any substantial evidence upon the basis of which ~~(a) a~~ either of the

AB 192 Assembly Bill - INTRODUCED

following apply: (1) A reasonable public employee could have adopted the plan or design or the standards therefor ~~or (b) a~~ .

(2) A reasonable legislative body or other body or employee could have approved the plan or design or the standards therefor. ~~Notwithstanding~~

(b) ~~Notwithstanding~~ notice that constructed or improved public property may no longer be in conformity with a plan or design or a standard ~~which~~ that reasonably could be approved by the legislative body or other body or employee, the immunity provided by this section shall continue for a reasonable period of time sufficient to permit the public entity to obtain funds for and carry out remedial work necessary to allow ~~such~~ the public property to be in conformity with a plan or design approved by the legislative body of the public entity or other body or employee, or with a plan or design in conformity with a standard previously approved by ~~such~~

the legislative body or other body or employee. In the event that the public entity is unable to remedy ~~such~~ the public property because of practical impossibility or lack of sufficient funds, the immunity provided by this section shall remain so long as ~~such~~ the public entity ~~shall~~ reasonably ~~attempt~~ attempts to provide adequate warnings of the existence of the condition not conforming to the approved plan or design or to the approved standard. However, where a person fails to heed ~~such~~ that warning or occupies public property despite ~~such~~ that warning, ~~such~~ the failure or occupation shall not in itself constitute an assumption of the risk of the danger indicated by the warning.

(c) *The applicability of this section is a question of law for the court to determine.*

AB 192 Assembly Bill - Status

CURRENT BILL STATUS

MEASURE : A.B. No. 192
AUTHOR(S) : Tran.
TOPIC : Tort Claims Act.
HOUSE LOCATION : ASM

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

LAST HIST. ACT. DATE: 02/03/2005
LAST HIST. ACTION : Referred to Com. on JUD.
COMM. LOCATION : ASM JUDICIARY

TITLE : An act to amend Section 830.6 of, and to add Section 815.1 to, the Government Code, relating to governmental tort liability.

AB 192 Assembly Bill - History

COMPLETE BILL HISTORY

BILL NUMBER : A.B. No. 192

AUTHOR : Tran

TOPIC : Tort Claims Act.

TYPE OF BILL :

Active
Non-Urgency
Non-Appropriations
Majority Vote Required
Non-State-Mandated Local Program
Non-Fiscal
Non-Tax Levy

BILL HISTORY

2005

Feb. 3 Referred to Com. on JUD.

Jan. 28 From printer. May be heard in committee February 27.

Jan. 27 Read first time. To print.

Norton, Lori

From: Stark, Shane
Sent: Friday, February 11, 2005 10:56 AM
To: Fomer, John; Underwood, Stephen
Cc: Alvarez, Thomas; Diaz, Don; Norton, Lori; Laponis, Jim; 'Cliff Berg'; 'Jennifer Henning'; 'shyman@counties.org.'; 'rlopez@counties.org'
Subject: RE: AB 192 (Tran) -- Cap on tort liability.

Thanks, John. On the face of it, we should support AB 192. The next step is to put it on the legislative program committee agenda. I'll ask the CA to put it on the agenda for the next meeting. The bill language is pretty simple.

Section 1 adds section 815.1 "Notwithstanding any other law, in no action for injury shall the liability of a public entity exceed two hundred fifty thousand dollars (\$250,000) per individual or five hundred thousand dollars (\$500,000) per occurrence." This is broad ("injury" under sec. 810.8 means "death, injury to a person, damage to or loss of property, or any other injury that a person may suffer to his person, reputation, character, feelings or estate, of such nature that it would be actionable if inflicted by a private person."). If this proposal is serious, it is likely to draw fierce opposition.

Section 2 adds a subsection c to section 830.6, relating to design immunity for the public improvements with improved plans and situations where the immunity continues despite notice of design defect "(c) The applicability of this section is a question of law for the court to determine." This is a beneficial point -- it is better for a judge to apply the technical test for whether the county should retain its immunity despite a failure to fund improvements to fix a defective design than for a jury to do so.

This smells like a placeholder. The cap will be opposed by the plaintiffs' bar. We carefully determine the likelihood of its passage, whether this is a stalking horse or part of a larger "tort reform" effort [NOTE: Beware of "tort reform" -- the devil is in the details], and whether the damages cap and design immunity provisions are severable. I'll ask our lobbyist and CSAC. Onward, Shane

-----Original Message-----

From: Fomer, John
Sent: Friday, February 11, 2005 8:16 AM
To: Stark, Shane; Underwood, Stephen
Cc: Alvarez, Thomas; Diaz, Don
Subject: FW: CSAC Legislative Bulletin - February 10, 2005 (10 pages)
Importance: High

Shane and Steve ...

Attached please find the most recent CSAC Legislative Bulletin. I found the excerpt below particularly interesting. What's the process for providing comment?

Tort Claims Act

AB 192 (Tran) – Request for Comment

Counties are urged to review the provisions of AB 192, a measure by Assembly Member Van Tran, related to the Tort Claims Act. The measure has two primary provisions. First, it would limit governmental liability in actions for injury to \$250,000 per individual or \$500,000 per occurrence. It proposes to amend the design immunity statute, Government Code Section 830.6, to clarify that a judge, not the jury, should determine the applicability of the statute. We welcome comments on this measure as soon as is practical. AB 192 has been referred to the Assembly Judiciary Committee, but a hearing date has not yet been set.

- john

EXHIBIT C-3 (Designated Positions)

SANTA BARBARA COUNTY HOUSING &
COMMUNITY DEVELOPMENT DEPARTMENT

| <u>Designated Employee Positions:</u> | <u>Disclosure Categories for Positions:</u> |
|---|--|
| <p>Persons occupying the following positions are “designated employees”* and must disclose financial interest in those categories described in Exhibit “B: Standard Disclosure Categories” of Santa Barbara County Resolution No. 95-450, as amended. The term “local agency” as used in said Exhibit B shall mean for purposes of this Exhibit C-3 the Santa Barbara County Housing & Community Development Department</p> | |
| <p>Positions:</p> | |
| <ol style="list-style-type: none"> 1. Director 2. Coordinator, Economic Development Division 3. Manager, Housing Finance Division 4. Manager, Management Assessment & Planning Division | <p>1, 2, 3, 4, 5 1, 2, 3, 4, 5 1, 2, 3, 4, 5 1, 2, 3, 4, 5</p> |

*A “designated employee” is anyone within the above-mentioned agency who is an officer, employee, member or consultant who is designated in the code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest. (Government Code § 82019.)

The term “designated employee” does not include any officer identified in Government Code § 87200, i.e., members of planning commissions, members of the board of supervisors, district attorneys, county counsels, county treasurers, chief administrative officers and other public officials who manage public investments.