



September 3, 2024

Governor Gavin Newsom
State of California
1021 O Street
Sacramento, CA 95814

Subject: AB 2284 (Grayson) – VETO REQUEST

Dear Governor Newsom:

The State Association of County Retirement Systems (SACRS) respectfully requests your veto on AB 2284 (Grayson). Though the bill was introduced to provide clarity to the statutory definition of “compensation earnable,” SACRS believes this bill will create further complexities in the administration of retirement benefits and potentially lead to more litigation. The implementation of this bill could cause substantial disruption to the retirement systems.

This bill could add overtime and overtime-related pay items into pension calculations that the Legislature and California Supreme Court have prohibited. The costs for enhancing benefits through the mechanism proposed in the bill have not been identified but could be significant.

While some public employees may have been adversely affected by recent changes in law and court decisions, SACRS believes that the determination of a “group or class” of employees is fundamentally a management-labor issue that should be resolved through the local bargaining and/or civil service process. Giving retirement systems additional authority to determine if compensation can be included in pension calculations will be problematic and potentially detrimental. Retirement boards already enjoy wide latitude to determine if various pay items, incentive pays, and differentials that are earned can be included in pension calculations.

In 2012, the Legislature amended the “compensation earnable” definition as part of PEPRA and prohibited pay items related to earnings outside of normal working hours, such as standby pay and on-call pay. This was such a fundamental issue of the *Alameda* litigation that the Court agreed it did not violate members’ vested rights by excluding those pay elements. Creating a pathway through this bill to add overtime and overtime-related earnings back into pension calculations, by changing the “grade or class” definition, violates the *Alameda* decision, statute, and legislative intent.

Finally, protecting the financial integrity of pension systems is a critical responsibility of retirement systems. State law has long placed retirement systems in the position to scrutinize compensation that has been paid to enhance pension benefits inappropriately. As fiduciaries, retirement systems have an obligation to control pension costs. This bill will very likely lead to increased pension costs.

Sincerely,

David MacDonald
SACRS President



cc: Mary Hernandez, Chief Deputy Legislative Secretary, Governor's Office
Glenn Miles, Consultant, Committee on Labor, Public Employment and Retirement
Michael Bolden, Chief Consultant, Committee on Public Employment and Retirement
Scott Seekatz, Consultant, Senate Republican Caucus
Lauren Prichard, Consultant, Assembly Republican Caucus



Active Participating Employers:

CITY OF SAN JUAN
CAPISTRANO

COUNTY OF ORANGE

ORANGE COUNTY
CEMETERY DISTRICT

ORANGE COUNTY CHILDREN
& FAMILIES COMMISSION

ORANGE COUNTY
EMPLOYEES RETIREMENT
SYSTEM

ORANGE COUNTY FIRE
AUTHORITY

ORANGE COUNTY IN-HOME
SUPPORTIVE SERVICES
PUBLIC AUTHORITY

ORANGE COUNTY LOCAL
AGENCY FORMATION
COMMISSION

ORANGE COUNTY PUBLIC
LAW LIBRARY

ORANGE COUNTY
SANITATION DISTRICT

ORANGE COUNTY
TRANSPORTATION
AUTHORITY

SUPERIOR COURT OF
CALIFORNIA, COUNTY
OF ORANGE

TRANSPORTATION
CORRIDOR AGENCIES

September 3, 2024

Governor Gavin Newsom
1021 O Street, Suite 9000
Sacramento, CA 95814

RE: Support for AB 2284 (Grayson) - An act to amend Section 31461 of the Government Code, relating to retirement.

Dear Governor Newsom:

The Orange County Employees Retirement System ("OCERS") respectfully requests that you sign into law AB 2284 (Grayson). OCERS is a county retirement system governed by the California County Employees Retirement Law ("the CERL," Government Code sections 31450, et seq.). On June 17, 2024, the OCERS Board of Retirement voted unanimously to support AB 2284.

We request your signature on the bill because the clarity provided by AB 2284's provision to permit a CERL system to define the term "grade," as it is used in the calculation of "compensation earnable," will help OCERS meet its obligation of administering the system in a manner consistent with the California Public Employees' Pension Reform Act of 2013 ("PEPRA") as interpreted by the California Supreme Court in *Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association* (2020) 9 Cal.5th 1032.

For the purpose of calculating benefits, the CERL defines "compensation earnable" (in Gov. Code, § 31461) to mean a member's average compensation for the period under consideration upon the basis of the average number of days ordinarily worked by persons *in the same grade or class of positions* during the period and the same rate of pay, subject to certain exceptions. However, the CERL does not define the terms grade or class.

AB 2284 amends § 31461 to provide the option for a retirement system to adopt a definition of "grade" that is equivalent to the definition of "group or class" contained in the parallel provision of the Public Employees' Retirement Law "PERL" (in Gov. Code, § 20636), which governs the California Public Employee Retirement System ("CalPERS").

The amendment stipulates that this option is only accessible should a county's Board of Supervisors adopt a resolution to implement it within the county. Thus, the adoption of

the listed definition of "grade" is entirely permissive and would require action by both a county's Board of Supervisors and a retirement system's Board of Retirement to be effective. Each county and system can determine whether the definition and the clarity it brings would facilitate its work in benefit calculation and administration.

Also, contrary to the claim that this bill will invite litigation, there is no evidence that an almost identical definition in the PERL has led to any litigation or otherwise undermined pension reform efforts. Moreover, the bill does not alter the responsibilities of a retirement system vis-à-vis its member employers. Adopting a definition of "grade" already used in the PERL does not give a retirement system the authority to set employment grades or classes or alter existing ones. Rather, it provides employers with guidance on what these terms mean, information absent from the current regulatory scheme. Further, any concern that the amendment could lead to a violation of the *Alameda* holding is effectively mitigated by its explicit statement that:

Nothing in subparagraph (A) shall change the holding in Alameda County Deputy Sheriff's Association v. Alameda County Employees' Retirement Association (2020) 9 Cal.5th 1032, and to the extent that there is any conflict between this section and the holding in that case, the latter shall prevail.

OCERS fully supports AB 2284's goals of bringing clarity and consistency between the CERL and PERL. We urge you to sign this bill.

Thank you for your consideration.

Sincerely,

A handwritten signature in blue ink that reads "Steve Delaney". The signature is written in a cursive, flowing style.

Steve Delaney
Chief Executive Officer