

Date of Hearing: April 15, 2021

ASSEMBLY COMMITTEE ON PUBLIC EMPLOYMENT AND RETIREMENT

Jim Cooper, Chair

AB 761 (Chen) – As Amended March 18, 2021

SUBJECT: County employees' retirement: personnel: Orange County

SUMMARY: Authorizes the Board of Retirement for Orange County to appoint specified personnel who would not be county employees subject to county civil service and merit system rules, but would be employees of the retirement system, among other provisions. Specifically, **this bill:**

- 1) Authorizes the board of retirement for Orange County to appoint an administrator, assistant administrators, a chief investment officer, subordinate investment officers next in line of authority to the chief investment officer, senior management employees next in line of authority to the subordinate investment officers, subordinate administrators, senior management employees next in line of authority to subordinate administrators, and legal counsel.
- 2) Establishes that the aforementioned personnel appointed by the board of retirement for Orange County may not be county employees, but must be employees of the retirement system subject to the terms and conditions of employment established by the board of retirement.
- 3) Provides that all other personnel not appointed by the board of retirement for Orange County, as specified, must be county employees for purposes of the county's employee relations resolution, or equivalent local rules, and the terms and conditions established by the board of supervisors for county employees, including those pursuant to a memorandum of understanding.
- 4) Establishes that the compensation of appointed personnel, except as otherwise provided, must be the expense of administration of the retirement system, as specified.
- 5) Authorizes the board of retirement and board of supervisors to enter into agreements as necessary and appropriate to carry out these provisions.
- 6) Excepts from the application of existing law and for these purposes, specific provisions relating to the election or appointment of a retirement system administrator.
- 7) Makes conforming changes for these purposes.

EXISTING LAW:

- 1) Establishes the County Employees Retirement Law of 1937 (CERL) which governs 20 independent county retirement associations and provides for retirement systems for county and district employees in those counties adopting its provisions. Currently, 20 counties operate retirement systems under the CERL, including Orange County.
- 2) Establishes that the purpose of the CERL is to recognize a public obligation to county and district employees who become incapacitated by age or long service in public employment and its accompanying physical disabilities by making provision for retirement compensation and death benefits as additional elements of compensation for future services, and to provide a means by which public employees who become incapacitated may be replaced by more capable employees to the betterment of public service without prejudice and without inflicting a hardship upon the employees removed.
- 3) Provides, pursuant to Section 17 of Article XVI of the California Constitution, that the boards of California's public retirement systems have "plenary authority and fiduciary responsibility for [the] investment of monies and administration of the system."
- 4) Provides under the California Constitution that "the members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system...[and] the board shall diversify the investments of the system so as to minimize the risk of loss and to maximize the rate of return unless under the circumstances it is clearly prudent to do so."¹
- 5) Provides, pursuant to statute, that the management of the retirement is vested in the board of retirement, except those otherwise delegated to the board of investment and for the statutory duties of the county treasurer.
- 6) Provides authority to a CERL board of retirement, board of investment, or both the boards of retirement and investment, respectively, to appoint various positions. Among these systems and by statute, some have expanded authority to appoint various positions when compared to others.

Some positions may be at-will employees of the CERL board, or employees of the county. Generally, those appointed by the board who are employees of the county are subject to civil service or merit system rules established by the county in which the retirement system is

¹ See California Constitution, *ibid*.

governed. Those who are at-will employees of the CERL board serve at the pleasure of the board and are not subject to civil service or merit system rules.²

Various statutory provisions exist as to the positions that may be appointed by the various boards, respectively. In addition, in some instances, CERL board appointment authority is conditioned on an affirmative act by the Board of Supervisors for the county of jurisdiction.

- 7) Specifically relating to the board of retirement for Orange County, the board is authorized to appoint an administrator, assistant administrator, chief investment officer (CIO), senior management employees next in line of authority to the CIO, subordinate administrators, senior management employees next in line of authority to subordinate administrators, and legal counsel.³

FISCAL EFFECT: None. This bill is keyed nonfiscal by Legislative Counsel.

COMMENTS: According to the author, “Assembly Bill 761 would add section 31522.11 to the Government Code. Existing law, [pursuant to Section 31522.5 of the Government Code], authorizes the retirement board for the Orange County Employees Retirement System (OCERS) to appoint an administrator, an assistant administrator, a chief investment officer, senior management employees next in line of authority to the chief investment officer, subordinate administrators, senior management employees next in line of authority to subordinate administrators, and legal counsel.

“[This bill] would authorize the retirement board for OCERS to appoint an administrator, assistant administrators, a chief investment officer, subordinate investment officers next in line of authority to the chief investment officer, senior management employees next in line of authority to the subordinate investment officers, subordinate administrators, senior management employees next in line of authority to subordinate administrators, and legal counsel..., [and] would expand the authority of the board of retirement for OCERS [to appoint] more than one assistant administrator and a level of management personnel between the OCERS CIO and the other personnel in the OCERS Investment Division.”

- 1) While there are Similarities in the CERL Related to System Administration and Administration of Retirement Benefits by CERL Systems, the CERL Also Recognizes and Allows a Modicum of Difference Among Them

As previously stated under “Existing Law”, 20 counties currently operate separate and independent retirement systems under the CERL. The counties are: Los Angeles, Orange, San Diego, Alameda, San Bernardino, Sacramento, Contra Costa, San Mateo, Fresno, Ventura, Kern, San Joaquin, Santa Barbara, Marin, Sonoma, Stanislaus, Tulare, Merced, Imperial, and Mendocino.

² See Sections 31522.1 through 31522.5, and Sections 31522.7 through 31522.10, of the Government Code.

³ See Section 31522.5 of the Government Code.

The CERL establishes “classes” of each county operating a retirement system thereunder which mirror the population of each county as ascertained and determined pursuant to Section 28020 of the Government Code. For example, under the CERL, Los Angeles County is of the first class; Orange County is of the second class; San Diego County is the third class; Alameda County is the fourth class; and so forth. None of these counties are within the same class.

The Public Employees’ Retirement Law (PERL) and the Teachers’ Retirement Law (TRL) for statewide public employee retirement systems establish uniform standards that commonly apply to members, participating agencies and school districts governed by those laws, respectively. In contrast, while the CERL generally provides a certain level of uniform standards relating to retirement benefits and the administration of such benefits, it also recognizes and allows for a modicum of difference in the administration of these systems and administration of retirement benefits since each CERL jurisdiction is separate and independent from the others, including the appointment of personnel by the respective CERL boards.

As to the latter point, this bill does not propose anything substantially different or radical when compared to other CERL systems that have either have limited, similar or substantially similar, statutory authority regarding the appointment of personnel.

2) Comments by Supporters

According to OCERS, “[Existing law] limits the authority of the OCERS retirement board to appoint only one assistant administrator, and requires all personnel of the OCERS Investment Division to report directly to the OCERS Chief Investment Officer. These limitations prevent OCERS from organizing and employing its present staff in the most efficient and cost-effective manner possible.

“[This bill] would allow the OCERS Board to appoint two assistant administrators as part of its long term succession planning, and to restructure the OCERS Investment Division by appointing, from existing personnel, a level of management personnel between the OCERS Chief Investment Officer and the other personnel in the OCERS Investment Division, and would allow the lower levels of employees in the Investment Division to report to mid-level management employees. This structure will enhance opportunities to mentor and develop lower level staff, give director level team members an opportunity to develop their own management skills, and introduce more formal succession planning into the Investment Division as well. In addition, this structure would allow for future organizational team needs and align the Investment Division with the expected continued long-term growth of plan assets.”

3) Prior or Related Legislation

Chapter 223, Statutes of 2015 (Assembly Bill 1291, Williams) established specific appointing authority for certain positions for the CERL system in Ventura County.

Chapter 244, Statutes of 2014 (Senate Bill 673, DeSaulnier) established specific appointing authority for certain positions for the CERL system in Contra Costa County.

Chapter 393, Statutes of 2009 (Assembly Bill 1406, Emmerson) extended specific appointing authority for certain positions for the CERL system in San Bernardino County that existed for Orange, Kern, San Joaquin, and Santa Barbara counties, respectively.

Chapter 74, Statutes of 2002 (Assembly Bill 1992, Correa) established specific appointing authority for certain positions for CERL systems in Orange County.

Chapter 120, Statutes of 2001 (Senate Bill 1132, Karnette) established specific appointing authority for certain positions for the CERL system in Los Angeles County.

Chapter 512, Statutes of 1996 (Assembly Bill 2655, Kaloogian) established specific appointing authority for certain positions for CERL systems in San Diego, Sacramento, Kern, and San Joaquin counties, respectively.

REGISTERED SUPPORT / OPPOSITION:**Support**

Orange County Employees Retirement System (*Sponsor*)

Opposition

None on file.

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