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June 18, 2024

The Honorable Thomas Umberg
Chair, Senate Judiciary Committee
1021 O Street, Room 3240
Sacramento, CA 95814

RE: AB 3025 (Valencia), Disallowed compensation benefit adjustment penalties – OPPOSE

Dear Senator Umberg,

I am writing on behalf of the Kern County Board of Supervisors to express our opposition to AB 3025 (Valencia), which would place a significant financial burden on member agencies of county retirement systems by requiring member counties, cities, and special districts, to pay substantial penalties for decisions they did not make and over which they had no authority.

The Public Employees' Pension Reform Act of 2013 (PEPRA) made several changes to the pension benefits that may be offered to employees hired on or after January 1, 2013. Among other things, the legislation raised the retirement age and decreased the benefit factors for new members, requires new members to pay for a portion of their retirement benefits, and includes provisions to eliminate pension spiking as well as a cap on the salary used to calculate pensions.

Following the passage of PEPRA, county retirement systems took varying approaches to comply with the provisions of the law related to which types of compensation may be included in retirement benefit calculations. On July 30, 2020, the California Supreme Court issued a decision in the case *Alameda County Deputy Sheriff's Assn. v Alameda County Employees' Retirement Assn.*, otherwise known as the "Alameda decision," in which the Court upheld provisions of PEPRA related to disallowed forms of compensation for retirement calculations. Over the last four years, the impacted '37 Act systems¹ have been working to comply with the Alameda decision and recalculate retirement benefits for members who retired after January 1, 2013.

Those systems that may have misinterpreted or misapplied the PEPRA and included disallowed compensation in calculating the retirement benefit of affected members are tasked with recalculating retirement benefits and removing disallowed items of compensation in order to comply with the court's decision in Alameda. In effect, this means that affected legacy '37 Act

¹ County Employees Retirement Law of 1937 is a body of law enacted to govern retirement benefits for certain public employees. Counties that operate under the law include Alameda, Contra Costa, Fresno, Imperial, Kern, Los Angeles, Marin, Mendocino, Merced, Orange, Sacramento, Santa Barbara, San Bernardino, San Diego, San Joaquin, San Mateo, Sonoma, Stanislaus, Tulare, and Ventura.

system members could receive a reduced retirement allowance prospectively, and there could be potential clawback of other moneys received that they are not legally entitled to receive per the court's decision.

The rationale behind this legislation, however, is that retirees make the decision to retire based on the retirement dollar amount provided to them and they should not bear the burden of adjustments to their retirement benefits if the calculation was predicated upon disallowed compensation. The bill seeks to alleviate potential financial burdens on pensioners and their beneficiaries by establishing specific notice and remediation processes that would force the employer (counties) to pay the retirement system the full cost of the overpayment as well as a penalty representing the difference between the monthly allowance that was based on the disallowed compensation and the adjusted monthly allowance, for the duration that allowance is projected to be paid by the system to the retired member, survivor, or beneficiary.

AB 3025, therefore, unfairly places the financial consequences of the Court's decision on counties and other agencies by requiring '37 Act system employers to pay a "penalty" equal to 20% of the current actuarial value of retiree benefits deemed unlawful. The penalty, which will result in affected agencies potentially owing millions of unbudgeted dollars to retirees for what the Court found to be an illegal benefit, implies those agencies made the decision to misapply the law. In reality, they simply complied with the pension agreements established between employees, employers, and retirement systems.

The potential fiscal impact of this bill will place a significant strain on affected agencies and their general fund dollars, resulting in reductions to critical programs and services counties provide including public safety, transportation, and health care.

For these reasons, the Kern County Board of Supervisors opposes this legislation and respectfully requests that you vote **NO on AB 3025**.

Sincerely,



David Couch, Chairman
Kern County Board of Supervisors

CC: Honorable Members, Senate Judiciary Committee
Honorable Members, Kern Legislative Delegation
California State Association of Counties
Kern County Human Resources Division
Shaw Yoder Antwih Schmelzer & Lange