SUMMARY

OF THE CONFERENCE COMMITTEE REPORT

ON PUBLIC EMPLOYEE PENSIONS

SUMMARY: Implements comprehensive public employee pension reform through enactment of the California Public Employees' Pension Reform Act of 2013 (PEPRA) and related statutory changes. Specifically, the conference committee amendments:

1) Establish PEPRA which will apply to all public employers and public pension plans on and after January 1, 2013.

2) Exclude the University of California and charter cities and counties that do not participate in a retirement system governed by state statute from the PEPRA requirements.

3) Establish a cap on the amount of compensation that can be used to calculate a retirement benefit on for all new members, as specified, of a public retirement system equal to the Social Security wage index limit ($110,100) for employees who participate in Social Security, or 120% of that limit ($132,120) if they do not participate in Social Security.

4) Require the retirement systems to adjust the compensation cap annually, as specified, based on changes in the Consumer Price Index (CPI) for all Urban Consumers.

5) Specify that the Legislature reserves the right to modify the annual CPI adjustments to the compensation cap prospectively.

6) Prohibit an employer from offering a defined benefit (DB) plan, or combination of DB plans, on compensation in excess of the compensation cap.

7) Define “new member” with regard to eligibility for the PEPRA as:

    a) An individual who has never been a member of any public retirement system prior to January 1, 2013.

    b) An individual who moved between retirement systems with more than a 6 month break in service, as specified.

    c) An individual who moved between public employers within a retirement system after more than a 6 month break in service, as specified.

8) Allow employers who offer alternate plans established prior to January 1, 2013 that have lower benefit formulas and that result in a lower normal cost to continue offering those plans to new employees.

9) Allow employers who offer a retirement benefit plan established prior to January 1, 2013 that consists solely of a Defined Contribution (DC) plan to continue offering that plan to new employees.

10) Excludes members of the Judges Retirement Systems I and II (JRS I and JRS II) from the PEPRA retirement formula and the compensation cap.

11) Allow employers who offer a retirement benefit plan that was approved by the voters prior to January 1, 2013 that have lower benefit formulas and that result in a lower normal cost to continue offering those plans to new employees.

12) Allow employers to provide contributions to a DC plan for compensation in excess of the cap provided that the plan and the contribution comply with federal law. Employees who receive an employer contribution to a DC plan will not have a vested right to the employer contribution.

13) Specify that the retirement formula for the DB plan will be 2% at age 62 for all new non-safety employees, excluding teachers. The formula is adjusted to encourage members to retire at later ages. The earliest an employee would be eligible to retire is age 52 with a 1% factor and the maximum retirement factor of 2.5% is provided at age 67.

14) Specify that the retirement formula for new members of the California State Teachers' Retirement System (CalSTRS) will be 2% at age 62. The earliest an employee would be eligible to retire is age 55 and with a maximum formula of 2.4% at age 65.

15) Specify three retirement formulas for the DB plan that will apply to new safety employees, as specified. The three formulas are: 2% at age 57; 2.5% at age 57; and, 2.7% at age 57.

16) Require contributions from employees to the DB plan equal to one-half of normal cost of the DB.

17) Require that final compensation be defined for all new employees as the highest average annual compensation over a three-year period.

18) Prohibit the following types of compensation from being used to calculate a retirement benefit on: compensation paid to enhance a retirement benefit; compensation previously provided “in-kind” and converted to cash in the final comp period; one-time or ad hoc payments; terminal pay; pay for unused leave or time off; pay for work outside of normal hours; uniform, housing or vehicle allowances; pay for overtime, except planned overtime, extended duty workweek, or pay defined in the federal labor codes; employer contributions to DC plans; and, bonuses.

19) Prohibit a public employer from providing a better health benefit vesting schedule for excluded and exempt employees than for represented employees in the same retirement classes.

20) Limit the maximum salary taken into account for any retirement plan to the federal limit established under 401(a)(17) of the Internal Revenue Code (IRC) and prohibit an employer from seeking a federal exemption from the limit.

21) Prohibit an employer from making contributions to any public retirement plan on any amounts of compensation that exceed the 401(a)(17) limit.

22) Prohibit a public employer from offering a benefit replacement plan for any member or survivor who is subject to the federal limit on benefits established by section 415(b) of the IRC for an employee first hired on and after January 1, 2013, or to any group of employees that was not offered a benefits replacement plan prior to that date.

23) Authorize a public retirement system to continue administering a 415(b) benefit replacement plan for employees first hired prior to January 1, 2013.

24) Prohibit a retroactive enhancement to a benefit formula, either due to a change to an existing formula, or due to a change to the retirement classification for a specific job.

25) Prohibit the purchase of non-qualified time ("airtime") on and after January 1, 2013. Any application to purchase airtime received by a retirement system prior to January 1, 2013 is grandfathered.

26) Specify that local elected members first elected on or after January 1, 2013 may not receive a retirement benefit for the elected service based on compensation earned in any other public employment. The retirement benefit for the elected service shall only be based on compensation earned for that service.

27) Prohibit all employers from suspending employer and/or employee contributions necessary to fund annual pension normal costs.

28) Prohibit post-retirement employment from exceeding 960 hours in a consecutive 12 month period. If a retiree receives unemployment benefits, he or she is prohibited from working for 12 months as a retiree for a public employer.

29) Prohibit a person who retires on or after January 1, 2013, from returning to work as a retired annuitant for a period of 180 days after retirement unless the action is approved in an open meeting, as specified by the governing body of the employer, or by California Department of Human Resources (CalHR) authority if state retiree, as specified. However, in no case could a person who receives a retirement incentive return to work as a retired annuitant for a period of 180 days after retirement.

30) Establish the following exceptions to 180 day rule:

    a) The retiree is participating in the Faculty Early Retirement Program pursuant to a collective bargaining agreement with the California State University.

    b) The retiree is a public safety officer or firefighter.

    c) The retiree is a trustee, administrator, or fiscal advisor appointed to address academic or financial weaknesses in a school or community college district, pursuant to specified requirements.

d) The retiree is a subordinate judicial officer whose position, upon retirement, is converted to a judgeship and he or she returns to work in the converted position.

e) The retiree is a person taking office as a judge, as specified.

31) Prohibit a public retiree who is first appointed on or after January 1, 2013 from serving full-time on a salaried state board or commission without suspending their retirement allowance or choosing to serve as a non-salaried member of the board or commission, as specified. Retiree health care benefits for these individuals would be protected so that the person is eligible to receive any prior employer provided retiree healthcare coverage upon re-retirement after leaving the board or commission. Appointees to the Parole Board are exempt from this prohibition.

32) Specify that retirees of CalSTRS are subject to the post-retirement employment limitations specified in that system.

33) Require public officials and employees to forfeit pension and related benefits if they are convicted of a felony in carrying our official duties, in seeking an elected office or appointment, or in connection with obtaining salary or pension benefits.

34) Allow public safety members who qualify for Industrial Disability Retirement (IDR) and are under age 50 to receive an actuarially reduced retirement benefit. This pilot project will sunset in 2018 unless extended by subsequent legislation.

35) Prohibit newly elected statewide officers and legislative officers from participating in the Legislators' Retirement System. They would continue to be optional members in the California Public Employees' Retirement System (CalPERS).

36) Specify that the Alternate Retirement Plan will not apply to new state employees subject to PEPRA.

37) Allow more flexibility for bargaining increased cost sharing between employers and existing employees in CalPERS and retirement systems established pursuant to the County Employees' Retirement Law of 1937 ('37 Act). Using impasse procedures to impose cost sharing arrangements achieved through this new flexibility would be prohibited if the proposed contribution exceeds statutorily required contributions for current employees or half of the normal cost of benefits for employees first hired on or after January 1, 2013.

38) Provide additional flexibility to CalPERS contracting agencies to achieve cost sharing goals with current employees, as specified.

39) Require CalPERS contracting agencies and school employers to achieve specific cost sharing goals by January 1, 2018.

40) Require additional contributions for various state bargaining units, and excluded and exempt employees of the state, executive, legislative and judicial branches that have not yet achieved equal

cost sharing of normal cost.

41) Require CalPERS to develop a system for monitoring excessive increases to salaries that create significant liabilities for former employers due to reciprocity, and for requiring the employers that caused the significant liability to be responsible for it.

42) Increase the retirement formula for new state miscellaneous members who opt to participate in the Second Tier from 1.25% at age 65 to 1.25% at age 67.

43) Prohibit certain cash payments from being counted as compensation earnable for retirement purposes in '37 Act counties

44) Provide '37 Act retirement boards with more independence to perform audits and assess penalties relating to pension spiking.

45) Require '37 Act county employers and districts to achieve specific cost sharing goals by January 1, 2018.

46) Specify that if any provision of the bill is held invalid, the rest may still be given effect.

47) Makes conforming changes to provisions of the Education Code administered by CalSTRS.

EXISTING LAW: California currently has dozens of public retirement systems and individual retirement plans. The largest are the California Public Employees' Retirement System (CalPERS), serving over 1.6 million members and retirees, and the California State Teachers' Retirement System (CalSTRS), serving over 850,000 members and retirees. CalPERS also administers the Judges' Retirement Systems I and II and the Legislators' Retirement System. In addition, there are many independent public retirement systems, including the 20 county systems that operate under the 1937 Act County Employees' Retirement Law, the University of California Retirement Plan, plans for the City and County of San Francisco, and cities of San Diego, Fresno, Sacramento, Oakland, San Jose, and others.

Some of these retirement systems and individual retirement plans are established under a statutory framework, while others operate under their own regulations and charters. Benefit formulas vary widely with differing retirement formulas for non-safety and safety employees and benefit levels and plan designs varying among retirement systems and employers. Finally, Social Security (SS) coverage varies. Non-safety state employees are coordinated with SS, while state safety employees are not. Teachers are not coordinated with SS, but school classified employees are coordinated. Employees of counties and cities have varying coverage. It is most common that safety employees do not have SS, while non-safety employees do have SS; however, that is not the case for every public employer. In some cases all employees of a public employer are coordinated, and in other cases no employees are coordinated.

The unifying factor for all public retirement systems and plans (with one or two known exceptions) is that they provide a defined benefit for retirees that is derived by multiplying the individual's years of service, highest average compensation over a 12 or 36 month period, and the individual's retirement benefit age factor (e.g., 2 percent at age 60). In addition, all systems provide cost-of-living adjustments in varying levels to retiree benefits, death and disability benefits, and survivor benefits. Finally, all defined benefit plans must comply with applicable federal laws in order to maintain their status as tax-qualified plans.

Benefits for retirement system members are funded over the employee's working career from three sources. First, employees make contributions as a percentage of payroll. Employee contribution rates are established in statute, or in rules and charters for the smaller plans. In some cases, employers and employees agree, through collective bargaining, to adjust employee contribution rates. The second source of funding is derived from investment returns on the retirement funds. For example, CalPERS estimates that historically, investment returns have paid for approximately 2/3 of the cost of providing benefits. The third source of funding is employer contributions, which are also determined and paid as a percentage of employee income. When investment returns do not perform as expected, employers make up the difference in the form of higher rates. Similarly, when investment returns exceed expectations, employer rates are reduced accordingly. These rate reductions and increases are actuarially "smoothed" over a period of years in order to ease employer rate volatility and ensure continued funding of the retirement systems.

AS PASSED BY THE ASSEMBLY, this bill prohibited certain cash payments from being counted as compensation earnable for retirement purposes in counties operating retirement systems pursuant to the County Employees' Retirement Law of 1937 ('37 Act) and prohibited a retiree in those counties from immediately returning to employment with the public employer on a part-time or contract basis.

The Senate amendments deleted the Assembly version of this bill, and instead stated that it is the intent of the Legislature to convene a conference committee to craft responsible and comprehensive pension reform legislation that reflects both the needs of public employees and the fiscal situations of state and local governments.

FISCAL EFFECT: Unknown, CalPERS and CalSTRS are in the process of preparing a fiscal analysis of the report. Savings are projected to be in the tens of billions over 30 years.

COMMENTS: The comprehensive pension reform proposal that is contained in the Conference Committee Report is based on the Governor's 12-Point Pension Reform Plan.

The Conference Committee Report includes 10 of the 12 points included in the Governor's plan. As an alternative to the hybrid plan the proposed by the Governor, we have included a hard cap on the amount of compensation that can be used when calculating a retirement benefit. There are only other two provisions of the 12-Point Plan that were not included at all and those were the changes to the CalPERS Board of Administration and the proposal to increase state retiree health care vesting. The Governor chose to drop the CalPERS Board issue and, on the health care vesting issue, state employee bargaining units have shown a willingness to bargain over this issue and so the Conference Committee believed it should remain subject to collective bargaining.

Additionally, in order to achieve our goal of comprehensive reform, we have included numerous pension reform changes that were included in bills going through the Legislature this session but were not included as part of the Governor's plan. Finally, the Report includes a number of other changes that are part of the comprehensive pension reform.