BILL NUMBER: SCA 8 (Moorlach) as introduced February 15, 2017

SUMMARY

SCA 8 permits a government employer to reduce retirement benefits that are based on work not yet performed by an employee regardless of the date that the employee was first hired, notwithstanding other provisions of the California Constitution or any other law. This constitutional amendment also prohibits the measure from being interpreted to permit the reduction of retirement benefits that a public employee has earned based on work that has been performed.

BOARD POSITION

Oppose. The board's policy is to oppose legislation that deprives members or participants of vested benefits.

REASON FOR THE BILL

According to the author, allowing pension plans to reasonably reduce future benefits will help keep plans sustainable and keep local governments solvent.

ANALYSIS:

Existing Law:

Through 60 years of case law, the California Supreme Court has set a precedent colloquially known as the "California Rule." This legal doctrine emanated from a 1955 case in which the Supreme Court applied a two-part test for determining whether a modification to a public employee's vested pension right that resulted in disadvantages to the employee would be "sustained as reasonable": (1) "alterations of employees' pension rights must bear some material relation to the theory of a pension system and its successful operation;" and (2) "changes in a pension plan which result in disadvantage to employees should be accompanied by comparable new advantages." It is important to note that the court uses the word "should" instead of "must" in the second prong of the test; however, the court treats the second prong of the test as mandatory because the bar for the test's first prong is extremely low. Thus, the test for determining whether modifications to an employee's vested contractual pension rights are "reasonable" hinges almost exclusively upon the second prong: whether any disadvantages are accompanied by comparable new advantages.

The comparable new advantages test of this 1955 case is so well settled by the California Supreme Court that it provided the framework for Chapter 47, Statutes of 2014 (AB 1469–Bonta), which increased member, employer and state contributions in order to address the unfunded liability of the State Teachers' Retirement Fund and fully fund the Defined Benefit (DB) Program by 2046. The Legislature recognized a member's vested pension right and in order to "disadvantage" public school educators by increasing their monthly contributions, the Legislature in return provided a

"comparable new advantage" by establishing the improvement factor as a contractually enforceable promise.

This Bill:

Specifically, SCA 8:

- Permits a government employer to reduce retirement benefits that are based on work not yet performed by an employee regardless of the date that the employee was first hired, notwithstanding other provisions of the California Constitution or any other law.
- Prohibits the measure from being interpreted to permit the reduction of retirement benefits that a public employee has earned based on work that has been performed.
- Defines "government employer" as the state, or a political subdivision of the state, including, but not limited to, counties, cities, charter counties, charter cities, a charter city and county, school districts, special districts, boards, commissions, the Regents of the University of California, the California State University and agencies thereof.
- Defines "retirement benefits" as defined benefit pension plans, defined contribution plans, retiree health care plans or any form of deferred compensation offered by a government employer.

LEGISLATIVE HISTORY

AB 1469 (Bonta, Chapter 47, Statutes of 2014) increased member, employer and state contributions to fully fund the DB Program by 2046.

AB 340 (Furutani, Chapter 296, Statutes of 2012), also known as PEPRA, reduced retirement benefits and established a new benefit structure for educators who were first hired on or after January 1, 2013.

PROGRAM BACKGROUND

SCA 8 creates a fissure in California vested pension rights law and would ultimately destabilize the previously solid foundations of vested rights. The Legislature along with CalSTRS and its members have acted upon the understanding first promulgated by the California Supreme Court that a detrimental modification to a vested pension right must be accompanied by a "comparable new advantage." California's educators relied upon decades of legal precedent when agreeing to the "disadvantage" of increasing their contributions in order to ensure the fiscal stability of the DB Program, receiving in return the "comparable new advantage" of establishing the improvement factor as a contractually enforceable promise. CalSTRS funding plan relies on this precedent, and SCA 8 would create unnecessary confusion.

In addition, SCA 8 opens the door for the creation of multiple layers of calculations to comprise an individual's benefit, dramatically increasing plan complexity, as different periods of service potentially accrue benefits at different rates. Reconciling those different structures could present myriad difficulties. For example, if legislation was enacted requiring members to have 30 years of service in order to retire and a member had already earned five years of service under the current benefit structure (thus

earning the right to retire), prospective service would have little value unless that member had enough time to be able attain 25 more years of service. Because of these uncertainties, SCA 8 is likely to have significant workforce implications.

FISCAL IMPACT

Program Cost – Unknown due to the fact that any potential changes to the CalSTRS benefit structure would require additional action.

Administrative Costs/Savings – Unknown.

SUPPORT

None known.

OPPOSITION

CalSTRS

ARGUMENTS

Pro: None.

Con: Undermines more than 60 years of legal precedent of the "California Rule."

Creates significant workforce implications due to the uncertainty of reduced benefits.

Allows for the creation of multiple benefit calculations or multiple benefit structures.

May result in extreme and unsustainable complexity in administering retirement benefits.

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