



Alameda County Employees' Retirement Association  
BOARD OF RETIREMENT

**NOTICE and AGENDA**

**THIS MEETING WILL BE CONDUCTED VIA TELECONFERENCE  
[GOV'T CODE § 54953(e)]**

**ACERA MISSION:**

***To provide ACERA members and employers with flexible, cost-effective, participant-oriented benefits through prudent investment management and superior member services.***

**Thursday, March 17, 2022  
2:00 p.m.**

<b>ZOOM INSTRUCTIONS</b>	<b>BOARD OF RETIREMENT - MEMBERS</b>	
<p>The public can view the Teleconference and comment via audio during the meeting. To join this Teleconference, please click on the link below.  <a href="https://zoom.us/join">https://zoom.us/join</a>  <b>Webinar ID: 879 6337 8479</b>  <b>Passcode: 699406</b>  <b>Call-In Number:</b>  <b>1 (669) 900-6833 US</b></p> <p>For help joining a Zoom meeting, see:  <a href="https://support.zoom.us/hc/en-us/articles/201362193">https://support.zoom.us/hc/en-us/articles/201362193</a></p>	<b>JAIME GODFREY</b>	<b>APPOINTED</b>
	<b>CHAIR</b>	
	<b>LIZ KOPPENHAVER</b>	<b>ELECTED RETIRED</b>
	<b>FIRST VICE-CHAIR</b>	
	<b>OPHELIA BASGAL</b>	<b>APPOINTED</b>
	<b>SECOND VICE-CHAIR</b>	
	<b>DALE AMARAL</b>	<b>ELECTED SAFETY</b>
	<b>KEITH CARSON</b>	<b>APPOINTED</b>
	<b>TARRELL GAMBLE</b>	<b>APPOINTED</b>
	<b>HENRY LEVY</b>	<b>TREASURER</b>
<b>KELLIE SIMON</b>	<b>ELECTED GENERAL</b>	
<b>GEORGE WOOD</b>	<b>ELECTED GENERAL</b>	
<b>NANCY REILLY</b>	<b>ALTERNATE RETIRED<sup>1</sup></b>	
<b>DARRYL WALKER</b>	<b>ALTERNATE SAFETY<sup>2</sup></b>	

1 The Alternate Retired Member votes in the absence of the Elected Retired Member, or, if the Elected Retired Member is present, then votes if both Elected General Members, or the Safety Member and an Elected General Member, are absent.

2 The Alternate Safety Member votes in the absence of the Elected Safety Member, either of the two Elected General Members, or both the Retired and Alternate Retired Members.

*Note regarding accommodations:* The Board of Retirement will provide reasonable accommodations for persons with special needs of accessibility who plan to attend Board meetings. Please contact ACERA at (510) 628-3000 to arrange for accommodation.

*Note regarding public comments:* Public comments are limited to four (4) minutes per person in total.

The order of agendized items is subject to change without notice. Board and Committee agendas and minutes, and all documents distributed to the Board or a Committee in connection with a public meeting (unless exempt from disclosure), are available online at [www.acera.org](http://www.acera.org).

**1. CALL TO ORDER**

**2. ROLL CALL**

**3. PUBLIC COMMENT**

**4. CONSENT CALENDAR:**

The Board will adopt the entire Consent Calendar by a single motion, unless one or more Board members remove one or more items from the Consent Calendar for separate discussion(s) and possible separate motion(s).

**A. REPORT OF SERVICE RETIREMENTS:**

*Appendix A*

**B. APPROVE APPLICATIONS FOR RETIREMENT, DEFERRED:**

*Appendix B*

*Appendix B-1*

**C. APPROVE APPLICATIONS FOR DEFERRED TRANSFER:**

*None*

**D. LIST OF DECEASED MEMBERS:**

*Appendix D*

**E. APPROVE REQUEST(S) FOR UP TO 130 BI-WEEKLY PAYMENTS TO RE-DEPOSIT CONTRIBUTIONS AND GAIN CREDIT:**

*None*

**F. APPROVE STAFF RECOMMENDATIONS (UNCONTESTED) FOR DISABILITY RETIREMENTS:**

*Appendix F*

**G. APPROVE HEARING OFFICER RECOMMENDATIONS FOR DISABILITY RETIREMENTS:**

*None*

**H. APPROVAL of COMMITTEE and BOARD MINUTES:**

*February 17, 2022 Audit Committee Minutes*

*February 17, 2022 Minutes of the Regular Board Meeting*

*March 9, 2022 Investment Committee Minutes*

**I. MISCELLANEOUS MATTERS:**

- *Proposed Findings Regarding State of Emergency Pursuant to Gov't Code §54953(e)(3):*  
*Staff Recommendation: The Board finds that it has reconsidered the circumstances of the state of emergency and (1) the state of emergency continues to directly impact the ability of the members to meet safely in person, and (2) state or local officials continue to impose or recommend measures to promote social distancing.*
- *Operating Expenses as of January 31, 2022*
- *Approve Staff Recommendation regarding the County of Alameda's New Pay Item/Code Institutional Supervisor II Extra Shift Stipend – 238*
- *Approve Staff Recommendations regarding First 5 Alameda County's New Pay Items/Codes:*
  - *2022 CA COVID Other Reasons – C7E*
  - *2022 CA COVID Positive Test – C8E*

-----End of Consent Calendar-----  
(MOTION)

**REGULAR CALENDAR**  
**REPORTS AND ACTION ITEMS**

**5. DISABILITY AND DEATH BENEFIT CLAIMS**

- A.** Service Connected Disability Retirement Application of Pius Bachan, Deputy Sheriff II for the County of Alameda: Consideration of Hearing Officer's Proposed Findings of Fact and Recommended Decision, pursuant to Gov't Code § 31534.

**This Item will be addressed in Closed Session, pursuant to Gov't Code § 54957(b).**

- B.** Discussion and Possible Motion on Whether Gov't Code § 7523 et seq. (COVID-19 Service-Connection Presumption) Applies to Claims for Service-Connected Surviving Spouse Continuances:

**This item will be addressed in Open Session (materials are included in the public agenda packet), but the Board may go into Closed Session to receive advice from counsel, per Gov't Code § 54956.9(d)(2).**

Deceased Member: Oscar Rocha  
Surviving Spouse: Carol Maureen Ennor  
Non-Service-Connected Surviving Spouse Allowance Effective: July 24, 2020

**Staff Recommendation:** The Board determine that Gov't Code § 7523 et seq. applies to claims for service-connected surviving spouse continuances if the requirements of Gov't Code § 7523 et seq. are otherwise established.

**6. COMMITTEE REPORTS, RECOMMENDATIONS AND MOTIONS:**

**A. Investment: [See March 9, 2022 Investment Committee Agenda Packet for public materials related to the below listed items.]**

1. Summary of March 9, 2022 Meeting.
2. Motion to approve an up to \$43 million investment in Altas Partners Holdings III as part of ACERA's Private Equity Portfolio – Buyout, pending completion of Legal and Investment due diligence and successful contract negotiations.
3. Motion to approve an additional investment of up to \$35 million in Clarion Partners Lion Industrial Trust (“LIT”), as part of ACERA's Real Estate Portfolio – Core Plus, pending completion of Legal and Investment due diligence and successful contract negotiations.

**7. NEW BUSINESS:**

- A.** Motion to direct the Chief Executive Officer (or his designee) to vote ACERA's Proxy on behalf of the Board of Retirement at the State Association of County Retirement Systems (SACRS) Spring Conference Business Meeting.
- B.** Chief Executive Officer's Report.

**8. CONFERENCE/ORAL REPORTS**

**9. ANNOUNCEMENTS**

**10. BOARD INPUT**

**11. ESTABLISHMENT OF NEXT MEETING:**

**Thursday, April 21, 2022 at 2:00 p.m.**

**12. CLOSED SESSION (see Items 5A and 5B).**

**13. REPORT ON ACTION TAKEN IN CLOSED SESSION (see Items 5A and 5B).**

**14. ADJOURNMENT**

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**APPENDIX A  
APPLICATION FOR SERVICE RETIREMENT**

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AKINJO, Paul  
Effective: 01/08/2022  
Information Technology

LAU-HUNG, Jenny  
Effective: 01/08/2022  
Health Care Services Agency

CALLAGHAN-SANDER, Rilia  
Effective: 01/08/2022  
Dept of Child Support Services

LINN, George  
Effective: 12/18/2021  
Alameda Health System

CARR Dorene  
Effective: 01/01/2022  
Community Development Agency

MAYHEW, Russell  
Effective: 12/01/2021  
Information Technology

COLLETT, Mary  
Effective: 01/01/2022  
Health Care Services Agency

MEYER, Lisa  
Effective: 12/18/2021  
Dept. of Child Support Svcs

COREY, Irene  
Effective: 01/08/2022  
Social Services Agency

NGUYEN, Thanh  
Effective: 01/02/2022  
Alameda Health System

DE JESUS, Judith  
Effective: 12/28/2021  
Superior Court

NUNEZ, Irene  
Effective: 11/30/2021  
Public Defender

DELAY, Lori  
Effective: 01/08/2022  
Health Care Services Agency

OUBRE, Sandra  
Effective: 12/11/2021  
Social Services Agency

ELLIOTT, Denise  
Effective: 12/24/2021  
Health Care Services Agency

OWENS, Anthony  
Effective: 12/29/2021  
Sheriff's Department

FUKUDA, John  
Effective: 01/08/2022  
Sheriff's Department

PADUVERIS, Bart  
Effective: 12/22/2021  
Sheriff's Department

GABRIEL, Kevin  
Effective: 12/02/2001  
General Services Agency

SHAW, Michael  
Effective: 01/08/2022  
Health Care Services Agency

JAKOVAC, Joseph  
Effective: 12/11/2021  
Social Services Agency

TAKADA, Yoshiteru  
Effective: 12/24/2021  
Alameda Health System

KENT, Allison  
Effective: 01/01/2022  
Alameda Health System

THIEU, Catherine  
Effective: 01/08/2022  
Social Services Agency

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**APPENDIX A  
APPLICATION FOR SERVICE RETIREMENT**

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VILLALOBOS, Lynne  
Effective: 01/08/2022  
Superior Court

WASHINGTON, Sylvia  
Effective: 12/12/2021  
Alameda Health System

WALLACE, Michael  
Effective: 12/31/2021  
Zone 7

YOO, Sojin  
Effective: 12/31/2021  
Public Defender

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**APPENDIX B  
APPLICATION FOR DEFERRED RETIREMENT**

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DESTA, Melkamkal T.  
Health Care Services Agency  
Effective Date: 12/30/2021

LIU, Chung H.  
Alameda Health System  
Effective: 12/16/2021

KOBER, Brendan M.  
Health Care Services Agency  
Effective: 12/31/2021

ROBERTS, Joshua G.  
General Services Agency  
Effective: 01/11/2022

LAI, Sophia  
Health Care Services Agency  
Effective: 01/21/2022

SELBY, Jaime L.  
District Attorney  
Effective: 01/21/2022

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**APPENDIX B-1  
APPLICATION FOR NON-VESTED RETIREMENT**

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AHMED, Beenish  
Information Technology  
Effective Date: 01/21/2022

DAVIS, Delbert E.  
Alameda Health System  
Effective: 01/18/2022

ALLEN, Soraya F.  
Alameda Health System  
Effective: 01/06/2022

FISHER, Nicole  
Superior Court  
Effective: 01/26/2022

BARNES, Kameka L.  
Health Care Services Agency  
Effective: 12/31/2021

GARCIA, Jose R.  
Health Care Services Agency  
Effective: 12/23/2021

BELL, Rosann L.  
Alameda Health System  
Effective: 12/31/2021

GREEN, Breonna L.  
Alameda Health System  
Effective: 01/17/2022

BEN MOSHE, Karen P.  
County Administrator  
Effective: 01/21/2022

GRIFFIN, Bobbie J.  
Community Development Agency  
Effective: 12/17/2021

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**APPENDIX B-1  
APPLICATION FOR NON-VESTED DEFERRED**

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GUERRERO, Jocelyn L.  
District Attorney  
Effective: 12/13/2021

PIERCE, Janelle A.  
Social Services Agency  
Effective: 01/07/2022

HALL, Christa A.  
District Attorney  
Effective: 12/31/2021

SOTELO, Jessica M.  
District Attorney  
Effective: 01/21/2022

JOJEN, Nija  
Information Technology  
Effective: 01/11/2022

STEVENSON, Tiffany M.  
Community Development Agency  
Effective: 02/04/2022

LIANG, Janet  
County Administrator  
Effective: 01/21/2022

YEE, Myrna M.  
County Counsel  
Effective: 01/11/2022

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**APPENDIX D  
LIST OF DECEASED MEMBERS**

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AHLBORN, Zella  
Non-Mbr Survivor of Richard Ahlborn  
02/10/2022

GAN, Ursula  
Superior Court  
02/03/2022

ANDERSEN, Robert  
Public Health  
01/27/2022

HARGRAY, Lawrence  
Social Services Agency  
12/31/2021

ARMSTRONG, Donald  
Social Services Agency  
11/27/2021

HOLDEN, William  
District Attorney  
01/21/2022

BISCO, Mila  
Social Services Agency  
01/17/2022

JOHANSON, Diane  
Non-Mbr Survivor of Thomas Johanson  
01/24/2022

DEXTER, Judy  
Non-Mbr Survivor of Norman Dexter  
02/11/2022

LUONG, Kiem  
Social Services Agency  
02/06/2022

EACKER, Don  
Assessor  
01/23/2022

MEANY, David  
Health Care Services  
10/28/2021

FREITAS, Doris  
Public Defender  
01/27/2022

MIDKIFF, Leonard  
Alameda Health System  
01/15/2022

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**APPENDIX D  
LIST OF DECEASED MEMBERS**

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MOSHER, Garald  
Social Services Agency  
01/09/2022

SCHOENEMANN, Janet  
Alameda County Superior Court  
01/21/2022

NAPARST, Marilyn  
Non-Mbr Survivor of Stanley Naparst  
01/23/2022

SUPAN, Donald  
Public Defender  
02/05/2022

PESHON, Harry  
Public Works Dept  
01/16/2022

THOMPSON, Elizabeth  
Alameda Health System  
01/20/2022

QUEVEDO, Peter  
Hayward-San Leandro Municipal Courts  
01/14/2022

WINROW, Derek  
Alameda Health System  
02/02/2022 .

WOODS, Pascuala  
GSA Department  
02/01/2022

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**APPENDIX F  
APPLICATION FOR DISABILITY RETIREMENT**

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**Name:** Abbott, James  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Mr. Abbott's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

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**APPENDIX F**  
**APPLICATION FOR DISABILITY RETIREMENT**

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**Name:** **Curl, Chantell**  
**Type of Claim:** Service-Connected

Staff’s Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor’s report, including but not limited to, granting Ms. Curl’s application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

Based on the Medical Advisor’s and Staff’s review and determination of Ms. Curl’s ability to determine the permanency of her incapacity, to deny Ms. Curl’s request for an earlier effective date.

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**Name:** **Darbison, Daniel**  
**Type of Claim:** Service-Connected

Staff’s Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor’s report, including but not limited to, granting Mr. Darbison’s application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

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**Name:** **Kennedy, Patrick**  
**Type of Claim:** Service-Connected

Staff’s Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor’s report, including but not limited to, granting Mr. Kennedy’s application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

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**February 17, 2022**  
**Minutes of the Regular Board Meeting**  
**For approval under March 17, 2022**  
**Board “Consent Calendar”**



ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
*BOARD OF RETIREMENT*  
MINUTES

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**THIS MEETING WAS CONDUCTED VIA TELECONFERENCE WITH VIDEO**

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**Thursday, February 17, 2022**

Second Vice-Chair Ophelia Basgal called the meeting to order at 2:00 p.m.

Trustees Present: Dale Amaral  
Ophelia Basgal  
Keith Carson  
Tarrell Gamble  
Henry Levy  
Kellie Simon  
George Wood  
Darryl Walker (*Alternate*)

Trustees Excused: Jaime Godfrey  
Liz Koppenhaver  
Nancy Reilly (*Alternate*)

Staff Present: Victoria Arruda, Human Resource Officer  
Angela Bradford, Executive Secretary  
Sandra Dueñas-Cuevas, Benefits Manager  
Kathy Foster, Assistant Chief Executive Officer  
Erica Haywood, Fiscal Services Officer  
Jessica Huffman, Benefits Manager  
Harsh Jadhav, Chief of Internal Audit  
Vijay Jagar, Retirement Chief Technology Officer, ACERA  
David Nelsen, Chief Executive Officer  
Jeff Rieger, Chief Counsel  
Betty Tse, Chief Investment Officer

**PUBLIC INPUT**

During the Chief Executive Officer's Report portion of the meeting, Pete Albert, President of ACRE, stated that the Supplemental Retiree Benefit Reserve (SRBR, non-vested benefits) is intended for ACERA's retired members and the Active Death Equity Benefit (ADEB) is intended for ACERA's active employees and should be prefunded by employer and employee contributions. Chief Counsel Jeff Rieger stated that he will review that issue and advise the Board before the Board considers offering the ADEB.

**CONSENT CALENDAR  
REPORTS AND ACTION ITEMS**

**APPROVAL of APPLICATIONS FOR SERVICE RETIREMENT**

*Appendix A*

**APPROVAL of APPLICATIONS FOR RETIREMENT, DEFERRED**

*Appendix B  
Appendix B-1*

**APPROVAL of APPLICATIONS FOR DEFERRED TRANSFER**

*None*

**LIST OF DECEASED MEMBERS**

*Appendix D*

**APPROVAL of REQUEST FOR 130 BI-WEEKLY PAYMENTS TO RE-DEPOSIT CONTRIBUTIONS AND GAIN CREDIT**

*None*

**APPROVAL of STAFF RECOMMENDATIONS (UNCONTESTED) FOR DISABILITY RETIREMENTS**

*Appendix F*

**APPROVAL of HEARING OFFICER RECOMMENDATIONS FOR DISABILITY RETIREMENTS**

*None*

**APPROVAL of BOARD and COMMITTEE MINUTES**

*January 20, 2022 Minutes of the Regular Board Meeting  
February 2, 2022 Operations Committee Minutes  
February 2, 2022 Retirees Committee Minutes  
February 9, 2022 Investment Committee Minutes*

**MISCELLANEOUS MATTERS**

- *Proposed Findings Regarding State of Emergency Pursuant to Gov't Code § 54953(e)(3):  
**Staff Recommendation:** The Board finds that it has reconsidered the circumstances of the state of emergency and (1) the state of emergency continues to directly impact the ability of the members to meet safely in person, and (2) state or local officials continue to impose or recommend measures to promote social distancing.*
- *Quarterly Report on Member Under/Overpayments*
- *4th Quarter Call Center Report*
- *Approve Staff Recommendation regarding the County of Alameda's Amendment to Pay Item/Code Vacation Maximum Cashout – VMC.*
- *Approve Staff Recommendation regarding the County of Alameda's New Pay Item/Code Vacation Annual Max – VAM.*

**22-09**

**It was moved by George Wood and seconded by Henry Levy that the Board adopt the Consent Calendar. The motion carried 8 yes (*Amaral, Basgal, Carson, Gamble, Levy, Simon, Walker, Wood*), 0 no, and 0 abstentions.**

**REGULAR CALENDAR**  
**REPORTS AND ACTION ITEMS**

**DISABILITY AND DEATH BENEFIT CLAIMS**

The Board adjourned into Closed Session to discuss this issue, pursuant to Gov't Code § 54957(b):

Consideration of Examination of Service-Connected Disability Retiree, Pursuant to Gov't Code §§ 31729 and 31730:

Miya Gardere, Eligibility Service Tech III, Social Services Agency  
Effective Disability Retirement Date: December 17, 2017

The Board reconvened into Open Session and Chief Counsel Jeff Rieger reported that, pursuant to Govt. Code § 31730, the Board passed a motion to cancel Miya Gardere's disability retirement allowance, effective February 17, 2022:

**22-10**

**The motion carried 7 yes (*Amaral, Basgal, Carson, Levy, Simon, Wood, Walker*), 0 no and 0 abstentions.**

**COMMITTEE REPORTS, RECOMMENDATIONS AND MOTIONS**

*This month's Committee reports were presented in the following order:*

***Operations:***

Ophelia Basgal gave an oral report stating that the Operations Committee met on February 2, 2022 stating that the Committee discussed discharging benefits overpayments in the amount of \$42,126.20.

**22-11**

**It was moved by Ophelia Basgal and seconded by Tarrell Gamble that the Board approve the discharge of benefits overpayments in the amount of \$42,126.20. The motion carried 8 yes (*Amaral, Basgal, Carson, Gamble, Levy, Simon, Walker, Wood*), 0 no, and 0 abstentions.**

Trustee Basgal further reported that the Committee discussed using ACERA's annual inflation assumption (currently 2.75%) as the interest rate that will apply to monthly installments of lump sum death benefits under Gov't Code § 31784.

**22-12**

**It was moved by Ophelia Basgal and seconded by Kellie Simon that the Board approve the use of ACERA's inflation assumption (currently 2.75% per annum) for monthly installments of lump sum death benefits paid to beneficiaries under Gov't Code § 31784. The motion carried 8 yes (*Amaral, Basgal, Carson, Gamble, Levy, Simon, Walker, Wood*), 0 no, and 0 abstentions.**

Staff reported on the following Information Items at the Operations Committee meeting: *1)* Un-Audited Financial Statements, Operating Expenses and Actual Cash Report as of 12/31/2021; *2)* Board Member Conference Expense Report and Senior Manager Conference and Training Expense Report for 4<sup>th</sup> Qtr. 2021; and *3)* Proposed 2022 Operations Committee Work Plan.

Minutes of the meeting were approved as part of the Consent Calendar.

***Retirees:***

Henry Levy gave an oral report stating that the Retirees Committee met on February 2, 2022 and that the Committee discussed the Supplemental Cost of Living Adjustment increase for Tier I members who retired on or before April 1, 1981, and Tier 2 members who retired on or before April 1, 2000, effective with the April 1, 2022 monthly retirement allowance.

**22-13**

**It was moved by Henry Levy and seconded by Tarrell Gamble that the Board adopt the Supplemental Cost of Living Adjustment increase for Tier I members who retired on or before April 1, 1981, and Tier 2 members who retired on or before April 1, 2000, effective with the April 1, 2022 monthly retirement allowance. This annual supplemental benefit is non-vested and is funded by the Supplemental Retiree Benefit Reserve. The motion carried 8 yes (*Amaral, Basgal, Carson, Gamble, Levy, Simon, Walker, Wood*), 0 no, and 0 abstentions.**

Trustee Levy reported on the following Information Items: *1)* Annual Cost of Living Adjustment (COLA); *2)* 2022 Annual Retirees Committee Work Plan Review; *3)* Annual Health Care Planning Meeting with Retiree Representatives/Date Announcement; *4)* Report on 1099-R Processing; *5)* Retired Member (Lump Sum) Death Benefit; *6)* Report on Hearing Aid Benefits; *7)* Report on Open Enrollment Activity; and *8)* Miscellaneous Updates.

Minutes of the meeting were approved as part of the Consent Calendar.

***Investment:***

Tarrell Gamble gave an oral report stating that the Investment Committee met on February 9, 2022 and Staff reported on the following Information Items: **1)** 2022 Capital Market Assumption; **2)** Semiannual Performance Reviews for the Period Ending June 30, 2021 – Real Assets, Private Equity and Private Credit; **3)** Semiannual Performance Reviews for the Period Ending September 30, 2021 – Equities and Fixed Income, Absolute Return and Real Estate; and **4)** Investment Committee Meeting Workplan 2022.

Trustee Gamble reminded the Board that East Bay Times reporter George Kelly inquired about ACERA's investments with Cerberus at the last Board meeting. Trustee Gamble stated that ACERA has not had a relationship with Cerberus since November 2020 and that at no time was ACERA engaged with Cerberus in the manner described by Mr. Kelly.

Trustee Gamble further reported that Verus, ACERA's General Investment Consultant, provided a correction to its review of ACERA's current total fund 10-year forecast, which reflected a decrease from 6.3% to 6.1%.

Minutes of the meeting were approved as part of the Consent Calendar.

***Audit:***

Henry Levy gave an oral report stating that the Audit Committee met earlier today and stated that Audrey Elbert and Kenneth Yu of Williams, Adley & Company-CA, LLP. (WACO), presented and discussed the external audit scope of work and timeline of services for the Financial Statements ended December 31, 2021.

**22-14**

**It was moved by Henry Levy and seconded by Keith Carson that the Board approve the external audit scope of work and timeline of services for the Financial Statements ended December 31, 2021, to be performed by Williams, Adley & Company-CA, LLP. The motion carried 8 yes (*Amaral, Basgal, Carson, Gamble, Levy, Simon, Walker, Wood*), 0 no, and 0 abstentions.**

Trustee Levy reported on the following Information Items: **1)** Proposed 2022 Audit Committee Work Plan; **2)** Annual Risk Assessment; and **3)** Proposed 2022 Internal Audit Plan.

Minutes of the meeting will be presented to the Board for adoption on the Consent Calendar at the March 17, 2022 Board meeting.



**NEW BUSINESS:**

**Discussion and Possible Motion regarding the Supplemental Retiree Benefit Reserve (SRBR) Benefits Survey to be sent to all ACERA Active Members and Retirees**

ACERA Communications Manager Michael Fara presented and explained the results of the 2019 Supplemental Retiree Benefit Reserve (SRBR) Benefits Survey. Assistant CEO Kathy Foster and Mr. Fara responded to the Board's questions. After discussion, it was decided that Staff will conduct an SRBR Benefits Survey this year based on the Board's input. The 2022 SRBR Benefits Survey will be sent to all ACERA active and retired members to determine the type of benefits they are interested in receiving. Questions regarding the ADEB and a Hearing Aid Benefit will be included in the 2022 SRBR Benefits Survey along with the cost of each benefit.

**David Nelsen, Chief Executive Officer's Report**

Chief Executive Officer Dave Nelsen presented his February 17, 2022 written CEO Report which provided an update on: **1) Committee and Board Action Items; 2) Conference/Event Schedule; 3) Other Items: a) COVID-19 Responses; b) Pension Administration System Project; c) Board Operations: Strategic Planning and Board Education; and 4) Key Performance Indicators.**

Mr. Nelsen reported that he discussed ACERA's Strategic Planning Process with Board Chair Jaime Godfrey and that Trustee Godfrey is in favor of moving forward with conducting a Strategic Planning Event sometime in May 2022. Mr. Nelsen stated that he worked with Mosaic Governance Advisors who conducted an all virtual Strategic Planning Event with another CERL System last year. Mr. Nelsen stated that he will reach out to Amy McDuffee of Mosaic to help facilitate a hybrid (or virtual) Strategic Planning Event for ACERA. Mr. Nelsen further reported that he and Board Chair Godfrey also discussed inviting expert speakers to Committee and Board meetings to present topics of interests to the Board in lieu of conducting a Board Off-Site this year. Trustees expressed that some of the topics they are interested in are: new and/or cutting-edge information regarding governance, investments, operations, business succession plan, business continuity, etc. and the future of commercial real estate. Mr. Nelsen asked that Trustees send him an email with any additional topics they would like to be presented.

**CONFERENCE/ORAL REPORTS**

None.

**ANNOUNCEMENTS**

None.

**BOARD INPUT**

None.

**CLOSED SESSION (See DISABILITY AND DEATH BENEFIT CLAIMS)**

**ADJOURNMENT**

The meeting was adjourned at approximately 3:10 p.m.

Respectfully Submitted,



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David Nelsen  
Chief Executive Officer

03/17/22

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Date Adopted

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**APPENDIX A  
APPLICATION FOR SERVICE RETIREMENT**

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LECA, Andrew J.  
Effective: 11/13/2021  
Sheriff's Department

SCHULER, Jeanette M.  
Effective: 11/23/2021  
Health Care Services Agency

LEW, Jerry  
Effective: 12/25/2021  
Health Care Services Agency

SPOELMA, Susan  
Effective: 12/13/2021  
Health Care Services Agency

LI, Qinke  
Effective: 10/30/2021  
Social Services Agency

STODDARD, Cinda L.  
Effective: 11/13/2021  
District Attorney

LIVINGSTON, Eddie C.  
Effective: 12/4/2021  
Health Care Services Agency

TEAL Cynthia A.  
Effective: 12/11/2021  
Dept. of Child Support Services

MARTIN, Alandrea S.  
Effective: 12/3/2021  
Health Care Services Agency

THOMPSON, Gail E.  
Effective: 11/17/2021  
Health Care Services Agency

MC CREARY, Ryan T.  
Effective: 11/13/2021  
Probation Department

TOWNSEND, Mary L.  
Effective: 11/13/2021  
Sheriff's Department

MICHAEL, Jonathan D.  
Effective: 11/13/2021  
Social Services Agency

TURNER, Deborah A.  
Effective: 12/26/2021  
First 5

MITCHELL, Kyndra D.  
Effective: 12/11/2021  
Probation Department

UMOZURIKE, Okoro  
Effective: 12/11/2021  
Health Care Services Agency

SCHANTIN, Allison A.  
Effective: 11/13/2021  
Probation Department

WESTON, Olander  
Effective: 12/11/2021  
General Services Agency

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**APPENDIX B  
APPLICATION FOR DEFERRED RETIREMENT**

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BATARA, Jeanine M.  
Alameda Health System  
Effective Date: 10/26/2021

CALLAHAN, Colleen  
Alameda Health System  
Effective: 10/27/2021

BONSHAHI, Rowena  
Alameda Health System  
Effective: 11/29/2021

CEJA, Liana A.  
Social Services Agency  
Effective: 11/26/2021

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**APPENDIX B**  
**APPLICATION FOR DEFERRED RETIREMENT**

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COOPER, Lisa S.  
Alameda Health System  
Effective: 11/17/2021

MILLER, Samantha B.  
Social Services Agency  
Effective: 12/31/2021

COTTRELL, Juliana M.  
Probation Department  
Effective: 12/24/2021

MORRIS, Adam E.  
General Services Agency  
Effective: 12/16/2021

CROLL, Lorrinda M.  
District Attorney  
Effective: 11/26/2021

PEREZ GARCIA, Ernesto  
Sheriff's Department  
Effective: 1/1/2022

DEMOTT, Priscilla O.  
Auditor-Controller  
Effective: 11/29/2021

PHARN, Jessica L.  
Social Services Agency  
Effective: 10/26/2021

ELLIS, Charles H.  
Probation Department  
Effective: 11/16/2021

RAD, Ali  
Public Defender  
Effective: 12/2/2021

GONZALEZ, Yelba E.  
Social Services Agency  
Effective: 12/13/2021

SISLER, Patrick J.  
Sheriff's Department  
Effective: 1/7/2022

JAUREGUI-JUAREZ, Amalia  
First 5  
Effective: 11/26/2021

SOLES, Dawn  
LARPD  
Effective: 9/18/2021

KIM, Hyun-Joon G.  
District Attorney  
Effective: 12/10/2021

STAUFFER, Mathew D.  
Public Works Agency  
Effective: 1/3/2022

LANGER, Catharine  
Superior Court  
Effective: 12/1/2021

TEIXEIRA, Jennie M.  
Sheriff's Department  
Effective: 1/7/2022

LAU, Wing T.  
Public Works Agency  
Effective: 1/6/2022

WENDELL, Jennifer B.  
Social Services Agency  
Effective: 1/4/2022

WOODFOLK, Ashli D.  
Social Services Agency  
Effective: 10/29/2021

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**APPENDIX B-1  
APPLICATION FOR NON-VESTED DEFERRED**

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ABILLE, Mary Ann T.  
Alameda Health System  
Effective Date: 10/1/2021

MAGALEI, Jeanette M.  
Superior Court  
Effective: 12/10/2021

BONSHAHI, Rowena  
Alameda Health System  
Effective: 11/29/2021

MATSUMURA, Brenda  
Superior Court  
Effective: 12/23/2021

CUMMINGS, Kyle  
Superior Court  
Effective: 11/12/2021

MAYNE, Cynthia A.  
Superior Court  
Effective: 9/29/2021

DELLACQUA, Reno R.  
Zone 7  
Effective: 12/22/2021

MCCORMICK, Stacy B.  
District Attorney  
Effective: 12/30/2021

EL, Assusan F.  
Alameda Health System  
Effective: 11/18/2021

MCWOODS, Stephanie J.  
Social Services Agency  
Effective: 7/23/2021

FINSTER, Jessica S.  
Alameda Health System  
Effective: 11/4/2021

MILLER, Amy  
Superior Court  
Effective: 12/27/2021

HARRIS, Marjorie M.  
Superior Court  
Effective: 11/5/2021

MOORE, Jisel L.  
Health Care Services Agency  
Effective: 12/16/2021

HO, Tina H.  
Alameda Health System  
Effective Date: 10/22/2021

NELSON-LARYEA, Victoria A.  
Alameda Health System  
Effective: 12/14/2021

HUYNH, Nha H.  
Alameda Health System  
Effective: 10/30/2021

NICOLET, Gabrielle C.  
Public Defender  
Effective: 1/7/2022

JIMENEZ, Yesenia  
Community Development Agency  
Effective: 12/10/2021

OSMOND, Jessica L.  
Health Care Services Agency  
Effective: 12/17/2021

KHOJAZADA, Aziz F.  
Alameda Health System  
Effective: 12/23/2021

PITRE, Shamone D.  
Social Services Agency  
Effective: 10/15/2021

LIFSHAY, Julie  
Health Care Services Agency  
Effective: 12/27/2021

RIVERA, Cyrus A.  
Alameda Health System  
Effective: 12/22/2021

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**APPENDIX B-1  
APPLICATION FOR NON-VESTED DEFERRED**

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SOILEAU, Stephanie K.  
District Attorney  
Effective: 12/3/2021

TINSAY, Maria L.  
Alameda Health System  
Effective: 12/21/2021

THOMPSON, Nicole S.  
Alameda Health System  
Effective: 12/7/2021

WEIGEL, Adela C.  
Public Defender  
Effective: 12/8/2021

ZHONGLI, Yon K.  
Alameda Health System  
Effective: 12/1/2021

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**APPENDIX D  
LIST OF DECEASED MEMBERS**

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ELVIN, Kenneth  
Probation Department  
12/29/2021

LEUNG, Franklin  
Alameda Health System  
1/2/2022

FOY JR., Ralph  
Probation Department  
1/15/2022

LYNCH, Thomas D.  
Non-Mbr Survivor of Kay Lynch  
1/6/2022

GAUDINIER, Hazel  
Alameda Health System  
1/8/2022

OSBORN, Michael E.  
Public Works Agency  
12/11/2021

GOLDFARB, Stephen  
Alameda Health System  
6/29/2021

OSHEROFF, Gregory  
Probation Department  
12/16/2021

GONZALEZ, Carlos  
Alameda Health System  
12/24/2021

PEREZ, John E.  
Alameda Health System  
1/16/2022

GREEN, Robert L.  
Non-Mbr Survivor of Janice Green  
1/12/2022

SHUGART, Elizabeth  
Health Care Services Agency  
1/1/2022

HARRIS, Dorothy K.  
Alameda Health System  
12/18/2021

TRUDELL, Paul  
Public Defender  
1/17/2022

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**APPENDIX F**  
**APPLICATION FOR DISABILITY RETIREMENT**

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**Name:** **Manfredi-Giammona, Roxanna**  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Manfredi-Giammona's application for a service-connected disability, and waiving future annual medical examinations and questionnaires.

Based on the Medical Advisor's and Staff's review and determination of Ms. Manfredi-Giammona's ability to determine the permanency of her incapacity, to grant Ms. Manfredi-Giammona's request for an earlier effective date.

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**Name:** **Neufville-Pratt, Zondell**  
**Type of Claim:** Non-Service Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Neufville-Pratt's application for a non-service connected disability, and waiving future annual medical examinations and questionnaires.

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**Name:** **Silva, Marlon**  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Mr. Silva's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

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**Name:** **Verbeck, Angela**  
**Type of Claim:** Service-Connected

Staff's Recommendation:

Adopt the findings and conclusions and approve and adopt the recommendation contained in the Medical Advisor's report, including but not limited to, granting Ms. Verbeck's application for a service-connected disability, and waiving future annual medical examinations and questionnaires at this time.

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**March 9, 2022  
Investment Committee Minutes  
For approval under March 17, 2022  
Board “Consent Calendar”**

**The March 9, 2022 Investment Committee  
Minutes will be distributed  
under separate cover**



**February 17, 2022**  
**Audit Committee Minutes**  
**For approval under March 17, 2022**  
**Board “Consent Calendar”**



**MINUTES OF FEBRUARY 17, 2022 AUDIT COMMITTEE MEETING**

**THIS MEETING WAS CONDUCTED VIA TELECONFERENCE WITH VIDEO**

Date: February 17, 2022  
To: Members of the Audit Committee  
From: Henry Levy, Chair  
Subject: **Summary of the February 17, 2022 Audit Committee Meeting**

The Audit Committee Chair, Henry Levy called the February 17, 2022, Audit Committee meeting to order at 12:30 p.m.

**ACERA TRUSTEES, SENIOR MANAGERS AND PRESENTING STAFF IN ATTENDANCE**

Committee members present were, Dale Amaral and Keith Carson. Tarrell Gamble arrived after the roll call. Other Board members present were Ophelia Basgal, and Kellie Simon.

Staff present were David Nelsen, Chief Executive Officer; Kathy Foster, Assistant Chief Executive Officer; Harsh Jadhav, Chief of Internal Audit; Jeff Rieger, Chief Counsel; Erica Haywood, Fiscal Services Officer; Jessica Huffman, Benefits Manager; Sandra Dueñas, Benefits Manager; Vijay Jagar, Retirement Chief Technology Officer; and Betty Tse, Chief Investment Officer.

**PUBLIC COMMENT**

None

**ACTION ITEMS**

***External Audit:***

- 1. Presentation, discussion, and possible motion to approve the external audit scope of work and timeline of services for the Financial Statements ended December 31, 2021, to be performed by Williams, Adley & Company-CA, LLP**

Audrey Elbert and Kenneth Yu of Williams, Adley & Company-CA, LLP. (WACO), presented and discussed the 2022 external audit scope of work and timeline of the 2021 external audit.

After discussion, it was moved by Keith Carson and seconded by Ophelia Basgal, that the Audit Committee recommend to the Board of Retirement that the Board approve the external audit scope of work and timeline of services for the Financial Statements ended December 31, 2021, to be performed by Williams, Adley & Company-CA, LLP.

The motion carried 6 yes (*Amaral, Basgal, Carson, Gamble, Levy, Simon,*), 0 no, 0 abstentions.

**INFORMATION ITEMS**

*External Audit*

**1. 2022 Audit Committee Work Plan (Proposed)**

Staff presented the proposed 2022 Audit Committee work plan.

*Internal Audit*

**1. Review of Annual Risk Assessment**

Staff reviewed the Annual Risk Assessment.

**2. Presentation of the 2022 Internal Audit Plan (Proposed)**

Staff presented the proposed 2022 Internal Audit Plan. Chair, Henry Levy provided an education on the Annual Comprehensive Financial Report.

**TRUSTEE INPUT AND DIRECTION TO STAFF**

None

**FUTURE DISCUSSION ITEMS**

None

**ESTABLISHMENT OF NEXT MEETING DATE**

April 21, 2022 at 12:30 p.m.

**MEETING ADJOURNED**

The meeting adjourned at 1:31 p.m.

**CONSENT CALENDAR ITEM**

**Operating Expenses as of January 31, 2022**



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MEMORANDUM TO THE BOARD OF RETIREMENT

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DATE: March 17, 2022

TO: Members of the Board of Retirement

FROM: Erica Haywood, Fiscal Services Officer

SUBJECT: Operating Expenses and Budget Summary for the period ended January 31, 2022

DS  
EH

ACERA's operating expenses are \$181K under budget for the period ended January 31, 2022. Budget overages and surpluses worth noting are as follows:

**Budget Overages**

1. *Staff Development*: Staff Development is \$4K over budget due to timing difference.
2. *Depreciation*: Depreciation is \$1K over budget.

**Budget Surpluses**

3. *Staffing*: Staffing is \$132K under budget. This amount comprises surpluses in staff vacancies of (\$71K), and fringe benefits of (\$70K), offset by an overage in temporary staffing of \$9K due to some vacant positions filled by temporary staff.
4. *Professional Fees*: Professional Fees are \$8K under budget related to legal fees.
5. *Office Expense*: Office Expense is \$20K under budget. This amount comprises surpluses in printing and postage of (\$1K) and office maintenance and supplies of (\$5K) both due to savings in usage, communication expenses of (\$5K), building expenses of (\$7K), and equipment lease and maintenance of (\$2K).
6. *Member Services*: Member Services are \$9K under budget. This amount comprises surpluses in members' printing and postage of (\$7K), and disability medical expense of (\$6K), offset by overage in disability legal arbitration and transcripts of \$4K.
7. *Systems*: Systems are \$11K under budget. This amount comprises surpluses in software maintenance and support of (\$11K), and county data processing of (\$1K), offset by overage in business continuity expense of \$1K.
8. *Board of Retirement*: Board of Retirement is \$6K under budget. This amount comprises surpluses in board conferences and trainings of (\$4K) mainly due to unattended trainings and conferences, board miscellaneous expenses of (\$1K), and board compensation of (\$1K).

**Staffing Detail**

Permanent vacant positions as of January 31, 2022:

<b>Department</b>	<b>Position</b>	<b>Qty</b>	<b>Comments</b>
Administration	Assistant Chief Executive Officer	1	Vacant - currently budgeted for the year
Benefits	Senior Retirement Technician	2	Vacant - currently budgeted for the year
Benefits	Retirement Benefit Specialist	1	Vacant - currently budgeted for the year
Fiscal	Retirement Accountant II	1	Vacant - currently budgeted for the year
Investments	Investment Operation Officer	1	Vacant - currently budgeted for the year
Investments	Investment Analyst	1	Vacant - currently budgeted for the year
<b>Total Positions</b>		<b>7</b>	

<b>Pension Administration System Project as of January 31, 2022</b>					
All amounts are in \$	Year-To-Date			2022 Budget	2019-21 Actual
	Actual	Budget	Variance		
<b>Consultant Fees</b>					
Levi, Ray and Shoup	28,337	43,750	(15,413)	525,000	2,041,606
Segal	26,030	34,167	(8,137)	410,000	1,203,390
Other expenses	-	-	-	-	1,500
Leap Technologies	-	-	-	-	98,970
Total	54,367	77,917	(23,549)	935,000	3,345,466
<b>Staffing</b>	49,303	58,917	(9,614)	707,000	1,515,887
<b>TOTAL</b>	<b>103,671</b>	<b>136,833</b>	<b>(33,163)</b>	<b>1,642,000</b>	<b>4,861,353</b>

Attachments:

- Total Operating Expenses Summary
- Professional Fees – Year-to-Date – Actual vs. Budget
- Actual Operating Expenses comparison with last year



**ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
TOTAL OPERATING EXPENSES SUMMARY**

<b>YEAR TO DATE - ACTUAL VS. BUDGET</b>					
<b><i>January 31, 2022</i></b>					
	<b>Actual</b>	<b>Budget</b>	<b>YTD</b>	<b>2022</b>	<b>% Actual to</b>
	<b><u>Year-To-Date</u></b>	<b><u>Year-To-Date</u></b>	<b><u>Variance</u></b>	<b><u>Annual</u></b>	<b><u>% Actual to</u></b>
			<b><u>(Under)/Over</u></b>	<b><u>Budget</u></b>	<b><u>Annual Budget</u></b>
<b>Staffing</b>	\$ 1,227,273	\$ 1,358,830	\$ (131,557)	\$ 16,941,000	7.2%
<b>Staff Development</b>	25,345	21,620	3,725	279,000	9.1%
<b>Professional Fees</b> (Next Page)	85,186	92,980	(7,795)	1,146,000	7.4%
<b>Office Expense</b>	33,212	53,390	(20,178)	659,000	5.0%
<b>Insurance</b>	44,286	44,410	(124)	550,000	8.1%
<b>Member Services</b>	23,611	32,560	(8,949)	393,000	6.0%
<b>Systems</b>	87,169	97,740	(10,571)	1,207,000	7.2%
<b>Depreciation</b>	10,392	9,730	662	114,000	9.1%
<b>Board of Retirement</b>	32,143	38,600	(6,457)	656,000	4.9%
<b>Uncollectable Benefit Payments</b>	-	-	-	56,000	0.0%
<b>Total Operating Expense</b>	<b>\$ 1,568,617</b>	<b>\$ 1,749,860</b>	<b>\$ (181,244)</b>	<b>\$ 22,001,000</b>	<b>7.1%</b>



ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
PROFESSIONAL FEES  
YEAR TO DATE - ACTUAL VS. BUDGET  
January 31, 2022

	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>YTD Variance</u> <u>(Under)/Over</u>	<u>2022</u> <u>Annual</u> <u>Budget</u>	<u>% Actual to</u> <u>Annual Budget</u>
<b>Professional Fees</b>					
Consultant Fees - Operations and Projects <sup>1</sup>	\$ 35,817	\$ 36,080	\$ (263)	\$ 384,000	9.3%
Actuarial Fees <sup>2</sup>	16,600	16,600	-	420,000	4.0%
External Audit <sup>3</sup>	23,600	23,600	-	142,000	16.6%
Legal Fees <sup>4</sup>	9,169	16,700	(7,531)	200,000	4.6%
<b>Total Professional Fees</b>	<b>\$ 85,186</b>	<b>\$ 92,980</b>	<b>\$ (7,795)</b>	<b>\$ 1,146,000</b>	<b>7.4%</b>

	<u>Actual</u> <u>Year-To-Date</u>	<u>Budget</u> <u>Year-To-Date</u>	<u>YTD Variance</u> <u>(Under)/Over</u>	<u>2022 Annual</u> <u>Budget</u>	<u>% Actual to</u> <u>Annual Budget</u>
<b><sup>1</sup> CONSULTANT FEES - OPERATIONS AND PROJECTS:</b>					
<b>Administration</b>					
Banking transition consultant fees	8,300	8,300	-	50,000	
Total Administration	8,300	8,300	-	50,000	0.0%
<b>Benefits</b>					
Alameda County HRS (Benefit Services)	10,500	10,500	-	126,000	8.3%
Segal (Benefit Consultant/Retiree Open Enrollment)	10,600	10,880	(280)	131,000	8.1%
Total Benefits	21,100	21,380	(280)	257,000	8.2%
<b>Human Resources</b>					
Lakeside Group (County Personnel)	6,417	6,400	17	77,000	8.3%
Total Human Resources	6,417	6,400	17	77,000	8.3%
<b>Total Consultant Fees - Operations</b>	<b>\$ 35,817</b>	<b>\$ 36,080</b>	<b>\$ (263)</b>	<b>\$ 384,000</b>	<b>9.3%</b>
<b><sup>2</sup> ACTUARIAL FEES</b>					
Actuarial valuation	-	-	-	81,000	0.0%
GASB 67 & 68 Valuation	-	-	-	51,000	0.0%
GASB 74 & 75 Actuarial	-	-	-	15,000	0.0%
Actuarial Standard of Practice 51 Pension Risk	-	-	-	30,000	0.0%
Supplemental Consulting	16,600	16,600	-	200,000	8.3%
Supplemental Retiree Benefit Reserve valuation	-	-	-	43,000	0.0%
<b>Total Actuarial Fees</b>	<b>\$ 16,600</b>	<b>\$ 16,600</b>	<b>\$ -</b>	<b>\$ 420,000</b>	<b>4.0%</b>
<b><sup>3</sup> EXTERNAL AUDIT</b>					
External audit	19,600	19,600	-	119,000	16.5%
GASB 67 & 68 audit	2,000	2,000	-	11,000	18.2%
GASB 74 & 75 audit	2,000	2,000	-	12,000	16.7%
<b>Total External Audit Fees</b>	<b>\$ 23,600</b>	<b>\$ 23,600</b>	<b>\$ -</b>	<b>\$ 142,000</b>	<b>16.6%</b>
<b><sup>4</sup> LEGAL FEES</b>					
<b><u>Fiduciary Counseling &amp; Litigation</u></b>					
Nossaman - Fiduciary Counseling	(541)	1,459	(2,000)	17,500	14%
Reed Smith - Fiduciary Counseling	729	729	-	8,750	7%
Nossaman - Litigation	(2,301)	3,230	(5,531)	38,750	31%
Reed Smith - Litigation	5,002	5,002	-	60,000	48%
Subtotal	2,889	10,420	(7,531)	125,000	2.3%
<b><u>Tax and Benefit Issues</u></b>					
Hanson Bridgett	2,080	2,080	-	25,000	
Subtotal	2,080	2,080	-	25,000	8.3%
<b><u>Miscellaneous Legal Advice</u></b>					
Meyers Nave	4,200	4,200	-	50,000	
Subtotal	4,200	4,200	-	50,000	8.4%
<b>Total Legal Fees</b>	<b>\$ 9,169</b>	<b>\$ 16,700</b>	<b>\$ (7,531)</b>	<b>\$ 200,000</b>	<b>4.6%</b>



ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
TOTAL EXPENDITURES VS. PRIOR YEAR ACTUAL  
For the One Month Ending 1/31/2022

	<u>For the Month of January 2022</u>	<u>For the Month of January 2021</u>	<u>Variance</u>	<u>Year-To-Date 2022</u>	<u>Year-To-Date 2021</u>	<u>Variance</u>
STAFFING						
Salaries	756,431	741,625	14,806	756,431	741,625	14,806
Fringe Benefits	440,335	405,849	34,486	440,335	405,849	34,486
Temporary & Other Staffing Cost	30,507	51,691	(21,184)	30,507	51,691	(21,184)
Staffing Total	<u>1,227,273</u>	<u>1,199,165</u>	<u>28,108</u>	<u>1,227,273</u>	<u>1,199,165</u>	<u>28,108</u>
STAFF DEVELOPMENT	25,345	15,183	10,162	25,345	15,183	10,162
PROFESSIONAL FEES						
Actuarial Fees	16,600	15,830	770	16,600	15,830	770
Consultant Fees - Operations	35,817	17,062	18,755	35,817	17,062	18,755
Consultant Fees - Legal	9,169	7,343	1,826	9,169	7,343	1,826
External Audit	23,600	22,000	1,600	23,600	22,000	1,600
Professional Fees Total	<u>85,186</u>	<u>62,235</u>	<u>22,951</u>	<u>85,186</u>	<u>62,235</u>	<u>22,951</u>
OFFICE EXPENSE						
Bank Charges & Misc. Admin	10,659	9,258	1,401	10,659	9,258	1,401
Building Expenses	452	6,396	(5,944)	452	6,396	(5,944)
Communications	10,380	6,960	3,420	10,380	6,960	3,420
Interest expense on lease liability - GASB-87	1,026	1,447	(421)	1,026	1,447	(421)
Amortization expense of lease assets - GASB-87	3,548	3,548	0	3,548	3,548	0
Equipment Lease/Maintenance	3,697	2,936	761	3,697	2,936	761
Minor Equipment and Furniture	1,423	(115)	1,538	1,423	(115)	1,538
Office Supplies/Maintenance	1,056	1,608	(552)	1,056	1,608	(552)
Printing & Postage	971	905	66	971	905	66
Office Expense Total	<u>33,212</u>	<u>32,943</u>	<u>269</u>	<u>33,212</u>	<u>32,943</u>	<u>269</u>
INSURANCE	44,286	65,736	(21,450)	44,286	65,736	(21,450)
MEMBER SERVICES						
Disability - Legal Arbitration & Transcripts	7,942	0	7,942	7,942	0	7,942
Disability Medical Expense	4,000	9,100	(5,100)	4,000	9,100	(5,100)
Disability Claims Management	3,850	3,850	0	3,850	3,850	0
Health Reimbursement Acct. (HRA)	5,004	4,447	557	5,004	4,447	557
Member Training & Education	601	419	182	601	419	182
Printing & Postage - Members	2,214	7,818	(5,604)	2,214	7,818	(5,604)
Virtual Call Center	0	4,643	(4,643)	0	4,643	(4,643)
Member Services Total	<u>23,611</u>	<u>30,277</u>	<u>(6,666)</u>	<u>23,611</u>	<u>30,277</u>	<u>(6,666)</u>

ALAMEDA COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
TOTAL EXPENDITURES VS. PRIOR YEAR ACTUAL  
For the One Month Ending 1/31/2022

	<i><b>For the Month of January 2022</b></i>	<i><b>For the Month of January 2021</b></i>	<i><b>Variance</b></i>	<i><b>Year-To-Date 2022</b></i>	<i><b>Year-To-Date 2021</b></i>	<i><b>Variance</b></i>
SYSTEMS						
Business Continuity Expense	15,987	15,962	25	15,987	15,962	25
COVID-19 Related Expenses	0	877	(877)	0	877	(877)
County Data Processing	10,375	9,925	450	10,375	9,925	450
Minor Computer Hardware	3,333	5,240	(1,907)	3,333	5,240	(1,907)
Software Maintenance & Support	57,474	59,496	(2,022)	57,474	59,496	(2,022)
Systems Total	<u>87,169</u>	<u>91,500</u>	<u>(4,331)</u>	<u>87,169</u>	<u>91,500</u>	<u>(4,331)</u>
DEPRECIATION						
Depreciation Expense	10,392	9,752	640	10,392	9,752	640
BOARD OF RETIREMENT						
Board Compensation	1,100	1,200	(100)	1,100	1,200	(100)
Board Conferences & Training	667	2,561	(1,894)	667	2,561	(1,894)
Board Employer Reimbursement	28,250	30,000	(1,750)	28,250	30,000	(1,750)
Board Miscellaneous Expense	1,140	696	444	1,140	696	444
Board Software Maint. & Support	986	988	(2)	986	988	(2)
Board of Retirement Total	<u>32,143</u>	<u>35,445</u>	<u>(3,302)</u>	<u>32,143</u>	<u>35,445</u>	<u>(3,302)</u>
GRAND TOTALS	<u><u>1,568,617</u></u>	<u><u>1,542,236</u></u>	<u><u>26,381</u></u>	<u><u>1,568,617</u></u>	<u><u>1,542,236</u></u>	<u><u>26,381</u></u>

## **CONSENT CALENDAR ITEM**

**Approve Staff Recommendation regarding the County of Alameda's  
New Pay Item/Code Institutional Supervisor II Extra Shift Stipend – 238.**



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MEMORANDUM TO THE BOARD OF RETIREMENT

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DATE: March 17, 2022

TO: Members of the Board of Retirement

FROM: Sandra Dueñas-Cuevas, Benefits Manager 

SUBJECT: **Exclusion of New Pay Item/Code as “Compensation Earnable” and “Pensionable Compensation” – County of Alameda**

The County of Alameda (County) requested new pay item/code Institutional Supervisor II Extra Shift Stipend – 238 be reviewed to determine whether it qualifies as “compensation earnable” and “pensionable compensation”. This new pay item/code establishes a stipend for additional compensation of 5% of the base pay to be paid to full-time employees in the classification of Institutional Supervisor II (Job Code 6225SM) who are assigned and work an additional shift of eight or more hours of overtime. The effective date of this new pay item/code is February 9, 2022.

On January 25, 2022, the Board of Supervisors of the County of Alameda adopted an Ordinance approving the December 27, 2020 through December 20, 2025 Memorandum of Understanding (MOU) between the Alameda County Management Employees Association – Probation Department Managers Representation Unit 075 (ACMEA) and the County of Alameda. This MOU includes an update to Section 10.B. Additional Compensation for Institutional Supervisor II, which states: “Effective February 9, 2022, any employee occupying the classification of Institutional Supervisor II (Job Code 6225SM) when assigned to and working an additional shift that consists of eight (8) hours or more, and for which the additional shift is not part of the employee’s normal 40-hour weekly work assignment, shall receive an additional five percent (5%) stipend of the equivalent of the employee’s biweekly base pay and any adjustments provided for in Section 6-2 (Split Shift and Night Shift Work) of the Salary Ordinance as additional compensation for each shift worked in excess of 40 hours during that work week. Such additional compensation for assignments and/or activities shall be made and determined at the sole discretion of the Chief Probation Officer or designee.”

Staff and Chief Counsel reviewed the required supporting documentation (attached) and made the determination that the new pay item/code does not qualify as “compensation earnable” under Government Code Section 31461 (for Legacy members), or “pensionable compensation” under Government Code Section 7522.34 (for PEPPRA members).

Payments for work performed outside of the employee’s regular work week such as overtime pay, are excluded from “compensation earnable” (Government Code Section 31461(b)(3)) and “pensionable compensation” (Government Code Section 7522.34(c)(6)(8)). The two relevant Government Code sections are attached for the Board of Retirement’s (Board) reference.

Staff informed the County that its determination will be included on the Board’s consent calendar for its March 17, 2022 meeting. If this item is not pulled from the consent calendar for discussion, then the Board will approve Staff’s determination to exclude pay item/code Institutional

Exclusion of New Pay Item/Code as “Compensation Earnable” and “Pensionable Compensation” –  
County of Alameda (continued)  
March 17, 2022  
Page 2 of 2

Supervisor II Extra Shift Stipend – 238 from “compensation earnable” under Government Code Section 31461 (for Legacy members) and “pensionable compensation” under Government Code Section 7522.34 (for PEPRA members).

Attachments



**ALAMEDA COUNTY**  
**AUDITOR-CONTROLLER AGENCY**  
**MELISSA WILK**  
AUDITOR-CONTROLLER/CLERK-RECORDER

**REQUEST FOR ACERA'S REVIEW OF A NEW PAY ITEM/CODE**

Employer Name:	County of Alameda
Date of Request	2/9/22
Employer Department Submitting the Request	Auditor-Controller's Agency
Contact Person/Employer (include title/position)	Satjit Dale
Contact Person Telephone incl area code	(510) 272-6520
Contact Person Email address	satjit.dale@acgov.org
<b>Pay Item Name (and code Number)</b>	<b>238 Inst.Sup II Extra Shift Stipend</b>
Pay Item Effective Date per authorization:	2/9/22
State if additional documentation is attached	Yes – Board Letter, MOU Agreement

**NOTE:** The following information is required before ACERA can review and respond to the request. To meet ACERA's requirements, please provide substantive responses below or on a separate paper and return, with this form, all of the supporting documentation prior to issuing (paying) the pay item to any employee who is an ACERA member.

1. State the job classification of employees eligible for the pay item (i.e. Job Code 0499-Nurse Practitioners II may receive this pay item)

**RESPONSE #1: 6225 – Institutional Supervisor II**

2. State employment status of employees eligible to receive the pay item (i.e. full time employees, part time employees)

**RESPONSE #2: Full Time**

3. State the number of members or employees who are eligible to receive the pay item (i.e. all members or employees in a job classification eligible to receive the pay item, or "not to exceed one employee")

**RESPONSE #3: All members in job classification are eligible to receive this pay item**

4. State whether pay item is for overtime or regular base pay

**RESPONSE #4: Overtime, additional 8 hour shift**

5. State whether pay item is calculated as a fixed amount or percentage of the base pay

**RESPONSE #5: Percentage, 5% of base pay stipend**

6. State whether the pay item is paid one time (i.e. incentive pay, referral pay, bonus, award)

**RESPONSE #6: No**

7. State whether the pay item is an ad hoc payment (i.e, stipend, payment for attending a meeting during the working hours, payment for attending a meeting during non-working hours)

**RESPONSE #7: Stipend for working additional 8 hour shift**

8. State whether the pay item is a reimbursement (i.e., car allowance, housing allowance, uniform allowance, mileage payment, cell phone allowance)

**RESPONSE #8: No**

9. State regular working hours of the employees who will receive the pay item (i.e., 37.5 hour workweek employees, 40 hour workweek employees)

**RESPONSE #9: 40 Hour Workweek**

10. State whether pay item is for work performed outside of the regular workweek (i.e., payment for work or services performed outside of the employee's 37.5 hour workweek, or outside the employee's 40 hour workweek)

**RESPONSE #10: Yes**

11. State whether the pay item is for deferred compensation

**RESPONSE #11: No**

12. State whether the pay item is for retro payments

**RESPONSE #12: No**

13. State whether the pay item is for accrued unused leaves (i.e., sick leave, annual leave, floating holiday, vacation, comp time)

**RESPONSE #13: No**

14. State whether the payment is compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member or employee

**RESPONSE #14: No**

15. State whether the payment is severance or other payment in connection with or in anticipation of a separation from employment (and state if this payment is made while employee is working)

**RESPONSE #15: No**

16. State whether the pay item is paid in one lump sum or biweekly (or over some other time period-monthly, quarterly, annually)

**RESPONSE #16: Biweekly**

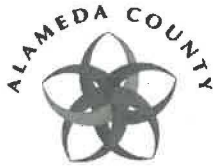
17. State the basis for eligibility for the pay item (i.e., certification of completion of training program conducted by an accredited university, or employee assigned as supervisor of badge distribution)

**RESPONSE #17: Per ACMEA-Probation Department Managers MOU**

**10.B. ADDITIONAL COMPENSATION FOR INSTITUTIONAL SUPERVISOR II.** Effective February 9, 2022, any employee occupying the classification of Institutional Supervisor II (Job Code 6225SM) when assigned to and working an additional shift that consists of eight (8) hours or more, and for which the additional shift is not part of the employee's normal 40-hour weekly work assignment, shall receive an additional five percent (5%) stipend of the equivalent of the employee's biweekly base pay and any adjustments provided for in Section 6-2. (Split Shift and Night Shift Work) of the Salary Ordinance as additional compensation for each shift worked in excess of 40 hours during that work week. Such additional compensation for assignments and/or activities shall be made and determined at the sole discretion of the Chief Probation Officer or designee.



**SECOND READING - CONTINUED FROM 01/11/2022**



AGENDA NO. \_\_\_\_\_ January **REVISED**

Lakeside Plaza Building  
1401 Lakeside Drive, Suite 200  
Oakland, CA 94612-4305  
TDD: (510) 272-3703

**Human Resource Services**

January 11, 2022

*2nd reading 1/25/22*

Honorable Board of Supervisors  
County of Alameda  
1221 Oak Street, Suite 536  
Oakland, California 94612-4305

**SUBJECT:** ALAMEDA COUNTY MANAGEMENT EMPLOYEES ASSOCIATION – PROBATION DEPARTMENT MANAGERS REPRESENTATION UNIT 075 MEMORANDUM OF UNDERSTANDING, INCLUDING FIVE (5) NEW SIDELETTERS OF AGREEMENT; AND SALARY ORDINANCE AMENDMENTS OF ARTICLE 1, SECTION 1-1, SUBSECTION 1-1.1 AND ARTICLE 7, SECTION 7.4.P

Dear Board Members:

**RECOMMENDATIONS:**

- A. Adopt an Ordinance approving the December 27, 2020 through December 20, 2025 Memorandum of Understanding (“MOU”) between the Alameda County Management Employees Association – Probation Department Managers Representation Unit 075 (“ACMEA”) and the County of Alameda (“County”), including Appendices A through C, and five (5) new Sideletters of Agreement (“SLAs”); and
- B. Adopt Salary Ordinance amendments to:
  - i. update Article 1, Section 1-1, Subsection 1-1.1, to reflect the negotiated wages of the ACMEA MOU for classifications in Representation Unit 075; and
  - ii. delete Article 7, Section 7.4.P (Vacation Sellback) to reflect the negotiated provisions added to the ACMEA MOU for classifications in Representation Unit 075.

**DISCUSSION/SUMMARY:**

The ACMEA – Probation Department Managers MOU expired and was fully terminated as of December 26, 2020. To reach agreement on a successor MOU, representatives of the County and representatives of ACMEA (collectively, the “Parties”) held 16 negotiating sessions beginning December 17, 2020. While the MOU expired and fully terminated on December 26, 2020, the laws governing collective bargaining agreements provide that the terms and conditions set forth in the expired MOU remain in full force and effect until modified through the completion of the collective bargaining process. The collective bargaining process has concluded and the Parties reached agreement on a successor MOU.

As such, we recommend that your Board adopt an Ordinance approving the December 27, 2020 through December 20, 2025, MOU between the Parties, including five (5) new SLAs.

The new MOU includes the following updated provisions:

- 1) Preamble – references a five-year term and eliminates membership reference to Operating Engineers Local 3 (“OE3”);
- 2) Section 2 (No Discrimination) – expands protected classes as defined by federal and state laws;
- 3) Section 3 (Association Security) – adds Senate Bill (“SB”) 866 (Dues Deduction) language;
- 4) Section 6 (Days of Work) – adds flex-day schedules;
- 5) Section 7 (Holidays and Paid Leave) – incorporates management paid leave and affirms floating holidays to not carry over to subsequent calendar year;
- 6) Section 10 (Additional Compensation) – provides five percent (5%) additional compensation for Institutional Supervisor (“IS”) II’s working additional 8-hour shifts;

- 7) Section 11 (Medical/Dental Benefits) – incorporates previous SLAs; increases employee’s cost share to 15% for medical premiums; adds County Preferred Provider Organization (“PPO”) / Indemnity medical plan; incorporates existing County Allowance, Share the Savings, and life insurance benefits into MOU; and eliminates OE3 PPO option;
- 8) Section 13 (Vacation Leave) – incorporates Management Paid Leave into MOU and implements vacation hard cap for all employees;
- 9) Section 15 (Wages) – provides wage increases and special adjustments for ISI/ISII and wage increases based on salary survey for Deputy Probation Officer (“DPO”) classifications;
- 10) Section 14 (Sick Leave) – incorporates SLA on Use of Sick Leave for industrial illness or injury;
- 11) Section 24 (Mileage reimbursement) – adds clean-up language to clarify reimbursement for property damage;
- 12) Section 26 (Scope of Agreement) - establishes term of the MOU from December 27, 2020 through December 20, 2025.; and
- 13) SLAs – establishes five (5) new SLAs on the following topics:
  - A) Vacation Sellback
  - B) ISI/ISII Schedule and Shift Bid
  - C) Labor Management Release Time
  - D) Use of County Vehicles
  - E) AB 119 New Employee Orientation

A Summary of Significant Negotiated Terms is attached.

Furthermore, it is recommended that the Salary Ordinance, Article 7, Section 7.4.(Vacation Sellback), item P., be deleted in its entirety as the language was incorporated into the successor MOU.

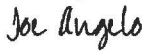
**FINANCING:**

Funds are available in the 2021-2022 Approved Budget and will be included in future years’ requested budgets to cover the costs resulting from these actions.

**VISION 2026 GOAL:**

The Salary Ordinance amendments meet the 10x goal pathways of **Employment for All** in support of our shared vision of a **Prosperous and Vibrant Economy**.

Very truly yours,

DocuSigned by:  
  
202202250934D4104  
Joe Angelo, Director  
Human Resource Services

- c: CAO  
Auditor-Controller  
County Counsel  
Chief Probation Officer

1st reading 1/11/22  
2nd reading 1/25/22

December 27, 2020 – December 20, 2025 Memorandum of Understanding

County of Alameda

ACMEA, Unit 075

enrollment requirements. Basic Life Insurance is subject to policy eligibility requirements, age limitations, coverage exclusions, conversion rights and all other provisions set forth in the Evidence of Coverage.

2. **Supplemental Life Insurance.** Voluntary employee supplemental life insurance may be purchased on a pre-tax basis through payroll deductions by the eligible employees. Voluntary employee supplemental life insurance is subject to premium costs, eligibility requirements, evidence of insurability, age limitations, coverage exclusions, conversion rights, and all other provisions set forth in the plan document.

### **SECTION 9. AFFIRMATIVE ACTION**

Both the County and the Association hereby recognize and confirm their mutual commitment to the philosophies and policies set forth in the Affirmative Action Program of the County of Alameda.

### **SECTION 10. PREMIUM CONDITIONS**

#### **10.A. BILINGUAL PAY**

1. **Positions Designated Bilingual.** Upon the recommendation of the Agency/Department Head and the approval of the Director of Human Resource Services, a person occupying a position designated as requiring fluency in a language other than English shall receive an additional \$30.00 per biweekly pay period. A person occupying such a position and having proficiency in three (3) or more languages, shall receive \$35.00 per pay period provided that such a person is required to utilize such additional languages in the course of his/her duties for the County.
2. **Bilingual Pay for Services Requested.** An employee who has taken and passed a bilingual proficiency test coordinated by the Human Resource Services Department and administered by a person who has been certified as bilingually proficient (including sign language for the deaf) shall be compensated \$30.00 in any pay period in which the employee is directed by the Agency/Department Head to use and uses the bilingual skills in the course of the employee's assignment. The bilingual proficiency test and the County's determination as to an employee's bilingual competency shall not be subject to the grievance procedure.

**10.B. ADDITIONAL COMPENSATION FOR INSTITUTIONAL SUPERVISOR II.** Effective February 9, 2022, any employee occupying the classification of Institutional Supervisor II (Job Code 6225SM) when assigned to and working an additional shift that consists of eight (8) hours or more, and for which the additional shift is not part of the employee's normal 40-hour weekly work assignment, shall receive an additional five percent (5%) stipend of the equivalent of the employee's biweekly base pay and any adjustments provided for in Section 6-2. (Split Shift and Night Shift Work) of the Salary Ordinance as additional compensation for each shift worked in excess of 40 hours during that work week. Such additional compensation for assignments and/or activities shall be made and determined at the sole discretion of the Chief Probation Officer or designee.

2020 MEMORANDUM OF UNDERSTANDING NEGOTIATIONS
BETWEEN THE
COUNTY OF ALAMEDA
AND THE
ALAMEDA COUNTY MANAGEMENT EMPLOYEES ASSOCIATION
(Probation Department Managers Representation Unit 075)

Purpose: County Amended Proposal #21 (Section TBD.A. (Compensation for Institutional Supervisor II) and Section TBD.B (Compensation Acknowledgement)) is contingent on the acceptance of new work schedules for Institutional Supervisor I/II (Job Code 6217SM/6225SM) in the context of meet and confer (File No. MC-20-234) as presented on September 23, 2020. This September 3, 2021 amended Proposal 21 is further intended to illustrate that Institutional Supervisor IIs shall not receive overtime when performing the job duties and responsibilities of the IS II classification.

TBD.A. ADDITIONAL COMPENSATION FOR INSTITUTIONAL SUPERVISOR II. Effective [two pay periods after adoption of the MOU by the Board of Supervisors], any employee occupying the classification of Institutional Supervisor II (Job Code 6225SM) when assigned to and working an additional shift that consists of eight (8) hours or more, and for which the additional shift is not part of the employee's normal 40-hour weekly work assignment, shall receive an additional five percent (5%) stipend of the equivalent of the employee's biweekly base pay and any adjustments provided for in Section 6-2. (Split Shift and Night Shift Work) of the Salary Ordinance as additional compensation for each shift worked in excess of 40 hours during that work week. Such additional compensation for assignments and/or activities shall be made and determined at the sole discretion of the Chief Probation Officer or their designee.

TBD.B. COMPENSATION ACKNOWLEDGEMENT. The parties acknowledge that employees in the classification of Institutional Supervisor II (Job Code 6225SM) and referenced in subsection TBD.A. (Additional Compensation for Institutional Supervisor II) above are "overtime exempt" (i.e., exempt from the minimum wage and overtime provisions of the Fair Labor Standards Act ("FLSA"), and not entitled to overtime under any provision of California state law). Moreover, such additional compensation under subsection TBD.A. (Additional Compensation for Institutional Supervisor II) above is provided to FLSA-exempt employees in accordance with 29 C.F.R.§541.604(a); and shall not be deemed to make any employee receiving such compensation "non-exempt" for any purpose.

TENTATIVE AGREEMENT

For the County:

For ACMEA:

DocuSigned by: Jeff Bailey
5EBF626044F840D...

DocuSigned by: Shawn A. Du Rosee
F2099BA3BCEC425...

Date: 11/4/2021

Date: 11/4/2021

Gov. Code Sec. 31461. (a) "Compensation earnable" by a member means the average compensation as determined by the board, 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 at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned in each 12-month period during the final average salary period, regardless of when reported or paid.

Gov. Code Sec. 7522.34. (a) "Pensionable compensation" of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

(b) Compensation that has been deferred shall be deemed pensionable compensation when earned rather than when paid.

(c) "Pensionable compensation" does not include the following:

(1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.

(2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.

(3) Any one-time or ad hoc payments made to a member.

(4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

(5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.

(6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

(8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.

(9) Employer contributions to deferred compensation or defined contribution plans.

(10) Any bonus paid in addition to the compensation described in subdivision (a).

(11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).

(12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

## **CONSENT CALENDAR ITEM**

**Approve Staff Recommendations regarding First 5 Alameda County's  
New Pay Items/Codes:**

- **2022 CA COVID Other Reasons – C7E**
- **2022 CA COVID Positive Test – C8E**



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MEMORANDUM TO THE BOARD OF RETIREMENT

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DATE: March 17, 2022

TO: Members of the Board of Retirement

FROM: Sandra Dueñas-Cuevas, Benefits Manager 

SUBJECT: **Approval of Two New Pay Items/Codes as “Compensation Earnable” and “Pensionable Compensation” – First 5 Alameda County**

First 5 Alameda County (First 5) requested that the below two new pay items/codes be reviewed to determine whether they qualify as “compensation earnable” and “pensionable compensation”. These new pay items/codes were established to comply with Senate Bill 114 (SB 114), which was signed into law on February 9, 2022. SB 114 requires covered employers to provide full-time employees up to 80 hours of Supplemental Paid Sick Leave (2022 SPSL) for specific COVID-19 related reasons in two separate banks of 40 hours. Part-time employees are eligible for prorated 2022 SPSL hours. The effective date of SB 114 and these new pay items/codes is retroactive to January 1, 2022, and sunsets on September 30, 2022.

- 2022 CA COVID Other Reasons – C7E  
This pay item/code will be used if an employee is unable to work or telework due to COVID-19 related reasons as outlined in SB 114.
- 2022 CA COVID Positive Test – C8E  
This pay item/code will be used if an employee tests positive for COVID-19 or are caring for a family member who tests positive.

Staff and Chief Counsel reviewed the required supporting documentation (attached) and made the determination that the new pay items/codes qualify as “compensation earnable” under Government Code Section 31461 (for Legacy members) and “pensionable compensation” under Government Code Section 7522.34 (for PEPRA members). Paid leave is included in both “compensation earnable” and “pensionable compensation”. The two relevant Government Code sections are attached for the Board of Retirement’s (Board) reference.

Staff informed First 5 that Staff’s determination will be on the Board’s consent calendar for approval at its March 17, 2022 meeting. If these items are not pulled from the consent calendar for discussion, then the Board will approve Staff’s determination that the pay items/codes are “compensation earnable” under Government Code Section 31461 (for Legacy members) and “pensionable compensation” under Government Code Section 7522.34 (for PEPRA members).

Attachments



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**REQUEST FOR ACERA'S REVIEW**  
**OF A NEW PAY ITEM/CODE**

Employer Name: First 5 Alameda County Date: 02/24/2022

Contact Person/Employer (include title/position): Steven Quach, Payroll & Finance Manger

Contact Person Telephone: 510-227-6997 Email: steven.quach@first5alameda.org

Pay Item Name (and code number): 2022 CA COVID Other Reasons (C7E) &

2022 CA COVID Positive Test (C8E)

Effective January 1, 2022

The following information is required before ACERA can review and respond to your request. Please provide substantive responses on separate paper and return with this form prior to issuing (paying) the pay item to any employee who is an ACERA member.

1. State the job classification of employees eligible for the pay item (i.e., Job Code 0499-Nurse Practitioners II may receive this pay item). Any F5 Alameda County employee
2. State employment status of employees eligible to receive the pay item (i.e., full time employees, part time employees) Either full-time or part-time employees may receive these pay items.
3. State the number of members or employees who are eligible to receive the pay item (i.e., all members or employers in a job classification eligible to receive the pay item, or "not to exceed one employee") Any F5 employee is eligible.
4. State whether pay item is for overtime or regular base pay. They are for regular base pay.
5. State whether pay item is calculated as a fixed amount or percentage of the base pay. These pay items are calculated by multiplying the number of CA COVID Supplemental Sick hours by the base pay rate.



6. State whether the pay item is paid one time (i.e., incentive pay, referral pay, bonus, award). These pay items would be paid whenever an employee takes off applicable time.
7. State whether the pay item is an ad hoc payment (i.e., stipend, payment for attending a meeting during working hours, payment for attending a meeting during non-working hours). These are not an ad hoc payment.
8. State whether the pay item is a reimbursement (i.e., car allowance, housing allowance, uniform allowance, mileage payment, cell phone allowance) The pay item is not a reimbursement.
9. State regular working hours of the employees who will receive the pay item (i.e., 37.5 hour workweek employees, 40 hour workweek employees) Regular employees working full-time (40 hours/week) or part-time employees receive these\_hours. Part-time employees earn prorated hours based on their FTE.
10. State whether pay item is for work performed outside of the regular workweek (i.e., payment for work or services performed outside of the employee's 37.5 hour work week, or outside of the employee's 40 hour work week) These pay items are not for work performed outside regular work week.
11. State whether the pay item is for deferred compensation. Pay items are not for deferred compensation.
12. State whether the pay item is for retro payments. These pay items are not for retro payments.
13. State whether the pay item is for accrued unused leave (i.e., sick leave, annual leave, floating holiday, vacation, comp time) Pay items are not for accrued unused leave.
14. State whether the payment is compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member or employee. They are not.
15. State whether the payment is severance or other payment in connection with or in anticipation of a separation from employment (and state if this payment is made while employee is working) These pay items are not severance and are not in connection with separation from employment. These are used during active employment.
16. State whether the pay item is paid in one lump sum or bi-weekly (or over some other time period-monthly, quarterly, annually). They are paid as requested as part of bi-weekly payroll.
17. State the basis for eligibility for the pay item (i.e., certification of completion of training program conducted by an accredited university, or employee assigned as supervisor of

badge distribution). Employees are eligible if they meet the qualifying reasons for using the hours as specified by the CA Department of Labor and CA Senate Bill 114.



February 24, 2022

To: Sandra Duenas, ACERA

From: Lyssa DeGolia  
Human Resources Administrator

Re: Justification for Pay Code Creation—2022 CA COVID Other Reasons (C7E) & 2022 CA COVID Positive Test (C8E)

We are requesting the creation of two new pay codes for First 5 Alameda County (F5AC) to comply with SB 114 signed into law on February 9, 2022. F5AC is a covered employer who must provide full-time employees two separate banks of 40 hours to use if unable to work (or telework) due to COVID-19 related reasons. Part-time employees are entitled to paid sick leave based on the number of hours proportional to the employees' part-time schedules.

We need these new pay codes to comply with this legal requirement.

The ACERA Exhibit 2 form has been completed for these codes. Please let me know if you need further information.

Thank you,

A handwritten signature in blue ink that reads "Lyssa DeGolia".

C: Kristin Spanos, CEO  
Brittney Frye, Human Resources Director  
Christine Hom, Finance Officer  
Steven Quach, Payroll and Finance Manager

Gov. Code Sec. 31461. (a) "Compensation earnable" by a member means the average compensation as determined by the board, 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 at the same rate of pay. The computation for any absence shall be based on the compensation of the position held by the member at the beginning of the absence. Compensation, as defined in Section 31460, that has been deferred shall be deemed "compensation earnable" when earned, rather than when paid.

(b) "Compensation earnable" does not include, in any case, the following:

(1) Any compensation determined by the board to have been paid to enhance a member's retirement benefit under that system. That compensation may include:

(A) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member, and which was converted to and received by the member in the form of a cash payment in the final average salary period.

(B) Any one-time or ad hoc payment made to a member, but not to all similarly situated members in the member's grade or class.

(C) Any payment that is made solely due to the termination of the member's employment, but is received by the member while employed, except those payments that do not exceed what is earned in each 12-month period during the final average salary period regardless of when reported or paid.

(2) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, in an amount that exceeds that which may be earned in each 12-month period during the final average salary period, regardless of when reported or paid.

(3) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(4) Payments made at the termination of employment, except those payments that do not exceed what is earned in each 12-month period during the final average salary period, regardless of when reported or paid.

Gov. Code Sec. 7522.34. (a) "Pensionable compensation" of a new member of any public retirement system means the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.

(b) Compensation that has been deferred shall be deemed pensionable compensation when earned rather than when paid.

(c) "Pensionable compensation" does not include the following:

(1) Any compensation determined by the board to have been paid to increase a member's retirement benefit under that system.

(2) Compensation that had previously been provided in kind to the member by the employer or paid directly by the employer to a third party other than the retirement system for the benefit of the member and which was converted to and received by the member in the form of a cash payment.

(3) Any one-time or ad hoc payments made to a member.

(4) Severance or any other payment that is granted or awarded to a member in connection with or in anticipation of a separation from employment, but is received by the member while employed.

(5) Payments for unused vacation, annual leave, personal leave, sick leave, or compensatory time off, however denominated, whether paid in a lump sum or otherwise, regardless of when reported or paid.

(6) Payments for additional services rendered outside of normal working hours, whether paid in a lump sum or otherwise.

(7) Any employer-provided allowance, reimbursement, or payment, including, but not limited to, one made for housing, vehicle, or uniforms.

(8) Compensation for overtime work, other than as defined in Section 207(k) of Title 29 of the United States Code.

(9) Employer contributions to deferred compensation or defined contribution plans.

(10) Any bonus paid in addition to the compensation described in subdivision (a).

(11) Any other form of compensation a public retirement board determines is inconsistent with the requirements of subdivision (a).

(12) Any other form of compensation a public retirement board determines should not be pensionable compensation.

**5. DISABILITY AND DEATH BENEFIT CLAIMS:**

**A. Service Connected Disability Retirement Application of Pius Bachan, Deputy Sheriff II for the County of Alameda:**

**Consideration of Hearing Officer's Proposed Findings of Fact and Recommended Decision, pursuant to Gov't Code § 31534.**

**This Item will be addressed in Closed Session, pursuant to Gov't Code § 54957(b).**

**5. DISABILITY AND DEATH BENEFIT CLAIMS:**

**B. Discussion and Possible Motion on Whether Gov't Code § 7523 et seq. (COVID-19 Service-Connection Presumption) Applies to Claims for Service-Connected Surviving Spouse Continuances:**

**This item will be addressed in Open Session (materials are included in the public agenda packet), but the Board may go into Closed Session to receive advice from counsel, per Gov't Code § 54956.9(d)(2).**

**Deceased Member: Oscar Rocha**


**Surviving Spouse: Carol Maureen Ennor**

**Non-Service-Connected Surviving Spouse Allowance Effective: July 24, 2020**

**Staff Recommendation: The Board determine that Gov't Code § 7523 et seq. applies to claims for service-connected surviving spouse continuances if the requirements of Gov't Code § 7523 et seq. are otherwise established.**



To: Members of the Board of Retirement  
From: Jeff Rieger, Chief Counsel  
Meeting: March 17, 2022  
Subject: **Applicability Of Gov't Code § 7523 Et Seq. To Death Benefit Claims**



### ISSUE

Safety Member Oscar Rocha died of COVID-19 on July 23, 2020. Mr. Rocha's surviving spouse, Maureen Ennor, is receiving a non-service-connected surviving spouse continuance (Gov't Code § 31781.1), without prejudice to her right to pursue a service-connected surviving spouse continuance (Gov't Code § 31787). Ms. Ennor is pursuing that claim through ACERA's Disability Retirement Procedures ("DRP"), as the DRP applies to a service-connection claim. The Office of County Counsel opposes Ms. Ennor's claim.

If Mr. Rocha had become disabled by COVID-19, it is undisputed that he would have been able to take advantage of a presumption that his disability was service-connected ("COVID-19 Presumption"), per Gov't Code § 7523 *et seq.* The COVID-19 Presumption shifts the burden of proof on service-connection from the applicant (Ms. Ennor) to the party opposing the applicant (Office of County Counsel).

The Office of County Counsel and Ms. Ennor jointly requested that the Board make a decision now as to whether the COVID-19 Presumption applies to claim for death benefits. Having this point resolved now will benefit the parties and the Hearing Officer if this matter proceeds to a Hearing Officer. I agree that it would be prudent for the Board to make this decision now, both for the purposes of this case and for any other service-connected death benefit claims by spouses or minor children of members who die from COVID-19.

Attached as Exhibit A is a letter from ACERA's outside counsel advising that the COVID-19 Presumption should apply to death benefit claims. Attached as Exhibit B are two letters from the Office of County Counsel, arguing that the COVID-19 Presumption should not apply to death benefit claims. Attached as Exhibit C is a letter from Ms. Ennor's attorney agreeing with ACERA's outside counsel that the COVID-19 Presumption should apply to death benefit claims. *Note: The letter from Ms. Ennor's attorney inaccurately attributes arguments of the Office of County Counsel to me. I have never argued against the application of the COVID-19 Presumption to death benefit claims.*

## MEETING PROCEDURE

This matter will be discussed in Open Session, as the legal authority that allows for closed sessions for disability applications does not apply to death benefit applications. The Board will, however, be able to go into Closed Session, pursuant to Gov't Code § 54956.9(d)(2), to consult with outside counsel confidentially. Any such Closed Session will include only the Board members and outside counsel. In open session, Ms. Ennor, her counsel and a representative from the Office of County Counsel will have the opportunity to make an oral presentation and answer any questions the Board may have. I will also answer the Board's questions in Open Session, but I will not participate in any Closed Session. I have had substantive conversations with each the parties outside of the other party's presence, which potentially raises due process concerns if I discuss this matter with the Board outside of the parties' presence.

## RECOMMENDATION

The Office of County Counsel has made sound arguments, based on principles of statutory construction, upon which the Board might reasonably conclude that the COVID-19 Presumption does not apply to death benefit claims. Ultimately, though, it is hard to understand what public policy the Legislature could have possibly been advancing by excluding death benefit claims from the COVID-19 Presumption. Death is the ultimate disability and we would not even be having this debate if Mr. Rocha (or someone on his behalf) had applied for a service-connected disability while he was in the hospital.

Ms. Ennor is seeking a service-connected surviving spouse continuance under Gov't Code § 31787, which is available when "a member would have been entitled to retirement in the event of a service-connected disability." Since a surviving spouse's eligibility for death benefits under section 31787 is based on the member's eligibility for a service-connected disability, it is most reasonable to conclude that section 31787 incorporates the same standards of proof that apply to a service-connected disability retirement application. The lack of reference to death benefits in section 7523 et seq. is not fatal to this conclusion, which is fundamentally based on the apparent legislative intent behind section 31787 to incorporate the service-connected disability standards—whatever they may be or become—into death benefit claims. Further, ambiguity or uncertainty in ACERA's governing law generally should be resolved in favor of a member or beneficiary. See *Block v. Orange County Employees' Retirement System* (2008) 161 Cal.App.4th 1297, 1307.

For these reasons, while the Office of County Counsel makes sound statutory construction arguments regarding section 7523 et seq., on balance I agree with outside counsel that the COVID-19 Presumption should apply to death benefit claims.



# **Exhibit A**

**Letter from Nossaman,  
dated September 3, 2021**



**ATTORNEYS AT LAW**

50 California Street  
34th Floor  
San Francisco, CA 94111  
T 415.398.3600  
F 415.398.2438

Ashley K. Dunning  
D 415.438.7228  
adunning@nossaman.com

Refer To File # 500118-0015

September 3, 2021

Board of Retirement  
Alameda County Employees' Retirement Association  
475 – 14<sup>th</sup> Street, Suite 1000  
Oakland, CA 94612

Re: Maureen Ennor's Application for Service-Connected Death Allowance and Government Code sections 7523-7523.2<sup>1</sup> ("COVID-19 presumption")

Dear Members of the Board:

On July 23, 2021, the Governor signed into law Assembly Bill No. 845 ("AB 845"), which provides a rebuttable presumption of service-connection to a member of a public retirement system in California, as defined in section 7523, subd (b), when that member "retires for disability on the basis, in whole or in part, of a COVID-19-related illness." (Section 7523.1.) The COVID-19 presumption sunsets on January 1, 2023, and thereafter is no longer be available.

This letter addresses two aspects of the new COVID-19 presumption that are pertinent to the above-referenced application for a death allowance under section 31878 of the County Employees Retirement Law ("CERL") submitted to ACERA by surviving spouse Maureen Ennor.

**Question No. 1:** Does the COVID-19 presumption apply to applications for *death allowances* sought under section 31878?

**Summary of Response to Question No. 1:** Most likely, yes. While the COVID-19 presumption statute itself does not clearly so state, we conclude that, subject to our response to Question No. 2, a court would likely deem that ACERA must permit surviving spouses to invoke the COVID-19 presumption if their deceased member spouse would have been eligible for service connected disability retirement under it, but died before retiring.

**Analysis:** Subdivision (a) of section 31877 provides, in pertinent part:

If a member would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of injury or disease arising out of an in the course of the member's employment, the surviving spouse of the member shall have the retire to elect . . . an optional death allowance.

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<sup>1</sup> All statutory references hereinafter are to the California Government Code.  
58317952.v1

(Emphasis added.) An ACERA member’s entitlement to “retirement in the event of a service-connected disability” is typically determined under the provisions of CERL Article 10 relating to Disability Retirement. Article 10 includes various presumptions of service-connection, as described therein, relating to heart trouble, cancer, blood-borne infectious disease and exposure to biochemical substances. While those statutes are in the Disability Retirement provisions of CERL, they may be invoked by or on behalf of a member or the member’s surviving spouse if the member dies before retiring, including in the context of an application for a service-connected death allowance under section 31787.

The COVID-19 presumption is the first disability retirement presumption that has been added to the California Public Employees’ Pension Reform Act of 2013 (“PEPRA”), such that it applies to all public retirement systems in California that are subject to PEPRA. While it is true, as County Counsel notes in briefing to the Board on this matter, the language of the statute references only disability retirement and not death benefits specifically, that terminology is common when considering other presumptions of service connection under CERL. Moreover, section 31787 specifically provides that the question is whether the member “would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of [service-connected injury or disease].” That standard applies includes consideration of any applicable service-connection presumption under disability retirement law.

For these reasons, we conclude that the COVID-19 presumption should be deemed available to be invoked by eligible surviving spouses under section 31787, just as any other CERL disability retirement presumption of service-connection is so available to them, subject to the limitations of each such presumption and subject to the further limitations noted below.

**Question No. 2:** Is the COVID-19 presumption available with respect to the Board’s consideration of Ms. Ennor’s application for a service-connected death allowance?

**Summary of Response to Question No. 2:** This rebuttable presumption is only available to Ms. Ennor if the Board takes final action on her application *on or after January 1, 2022, and before January 1, 2023.*

**Analysis:** AB 845 was enacted on July 23, 2021, but it was not passed as urgency legislation that would be effective upon adoption. Rather, as with all other non-urgency legislation, it will become effective on January 1, 2022.<sup>2</sup>

California law also establishes, however, that the law applicable to disability retirement (or, in this case death allowance) applications is the law in effect when the retirement board *finally approves or denies the application.*<sup>3</sup>

Thus, the ACERA Board will only be able to apply the COVID-19 presumption if it takes final action on Ms. Ennor’s application on or after January 1, 2022 and before January 1, 2023.

---

<sup>2</sup> Cal. Const, Art. IV § 8(c)(3)

<sup>3</sup> *Wilmot v. Contra Costa County Employees’ Retirement Assn.* (2021) 60 Cal.App.5<sup>th</sup> 631, 654. 58317952.v1

ACERA Board of Retirement  
September 3, 2021  
Page 3

Thank you for the opportunity to advise on this topic. This advice is provided to the ACERA Board of Retirement only and may not be relied upon by others.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley K. Dunning". The signature is written in a cursive style with a large, stylized "A" and "D".

Ashley K. Dunning  
of Nossaman LLP

# **Exhibit B**

**Letter from County Counsel  
dated August 13, 2021**

**Letter from County Counsel  
dated March 4, 2022**



## OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296  
Telephone (510) 272-6700 Facsimile (510) 272-5020

DONNA R. ZIEGLER  
COUNTY COUNSEL

August 13, 2021

Jeff Rieger, Chief Counsel  
Alameda County Employees' Retirement Association  
475 14th Street, Suite 1000  
Oakland, CA 94612

RE: Maureen Ennor's Service-Connected Death Allowance Request

Dear Mr. Rieger:

I write in response to your July 26, 2021, email regarding the recent enactment of Assembly Bill 845 ("AB 845") and its effect on the burden of proof in this case. Specifically, in your email, you note that AB 845 establishes a rebuttable presumption of service-connection for safety members who retire for disability due to health complications from the COVID-19 virus. You note that the law does not reference death benefits, such as the allowance sought by Ms. Ennor, and request input from both parties as to whether this new presumption applies to Oscar Rocha's death. You further invite the parties to supplement our submissions to the ACERA Board related to this issue. To that end, I request that the Board be provided with a copy of this letter in advance its September 16, 2021, meeting so that they are aware of the County's position.

AB 845 was enacted for the sole purpose of alleviating public pension association members seeking disability retirement of the burden of having to prove that their lingering COVID-19-related physical or psychological conditions are work-related by shifting the burden of disproving the same to the employer. The presumption was not intended to be extended to surviving beneficiaries of members who died as a result of contracting COVID-19. This is apparent from both the plain language of the statute and its legislative history.

AB 845 states "[f]or the purposes of a member who *retires* for disability on the basis, in whole or in part, of a COVID-19 *related illness*, it shall be presumed that the disability arose out of, or in the course of, the member's employment." (Gov. Code, § 7523.1, subd. (a), italics added.) Noticeably absent from the statute is any mention of death due to COVID-19 or death benefits. (See *ibid.*)

This omission is significant when comparing AB 845 to Senate Bill 1159 ("SB 1159"), the Workers Compensation statute enacted last year which created a similar statutory presumption. Unlike AB 845, SB 1159 specifically provides for death benefits in the event an employee contacts COVID-19 at work and subsequently dies because of the virus. (Compare Labor Code, §§ 3212.86, subds. (a) & (c), 3212.87, subds. (a) & (c), & 3212.88, subds. (a) & (c) with Gov. Code, § 7523.1, subd. (a).)

The omission of any discussion of death or death benefits from AB 845 is glaring. Clearly the Legislature was aware that existing Workers' Compensation law—enacted less than a year before—created a rebuttable presumption as to entitlement to service-connected death benefits related to the COVID-19 virus. The Legislature could have, but did not, apply the same presumption to the retirement laws governing service-connected death allowances. The fact that such language is not included in AB 845, shows that the Legislature intended that the statutory presumption in AB 845 only apply to living members seeking disability retirement. (See *Vasquez*

*v. State* (2008) 45 Cal.4th 243, 253 ["In construing . . . any[] statute, our office is to simply ascertain and declare what the statute contains, not to change its scope by reading into it language that it does not contain or by reading out of it language it does"]; *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal.App.3d 1, 8 ["The fact that a provision of a statute on a given subject is omitted from other statutes related to similar subjects is indicative of a different Legislative intent for each of the statutes. [Citations.] Where a statute with reference to one subject contains a certain vital word, omission of that word from a similar statute on the same subject is significant to show a different intention"].)

This conclusion is buttressed by the legislative history of AB 845. The Senate Floor Analysis of AB 845 quoted the following statement made by the California Professional Firefighters Union in support of the bill: "[w]hile [the Workers Compensation COVID-19] presumption is critical to provide immediate care to those who contract COVID-19, it does not address the ongoing symptoms and lingering health issues created by "long-haul" COVID, which affects a certain percentage of those infected long past the typical timeframe and which has presented baffling and devastating symptoms. Many of those suffering from longer-term COVID *may be forced to retire early due to their illness.*" (Sen. Rules Com., Off. of Sen. Floor Analysis, 3d reading analysis of Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 5, italics added.)

The report from the June 7, 2021, Senate Committee on Labor, Public Employment and Retirement hearing states "[f]or *members* who are eligible, this bill's COVID-19 presumption would be beneficial because *they* would not have to prove *their injury* was job-related (unless the employer offered evidence that the injury was not COVID-19 related)." (Sen. Com. on Labor, Public Employment and Retirement, Rep. on Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 4, italics added.)

The report from the April 28, 2021, Assembly Committee on Appropriations hearing states that the purpose AB 845, according to its sponsor, the California State Council of the Service Employees International Union, was to protect employees who are forced to retire early due to the lingering adverse health effects of COVID-19. Specifically, it quoted the union as stating: "[w]e are just discovering the lingering effects of 'Long Haul' COVID patients, and AB 845 is necessary to protect workers should those effects prove so disabling *the worker may not be able to return to work.*" (Assem. Com. on Appropriations, Rep. on Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 1, italics added.)

The report from the April 15, 2021, Assembly Committee on Public Employment and Retirement hearing made a similar comment as to the bill's purpose stating "[t]his bill may reasonably be viewed as one that takes into consideration that contracting the virus and subsequently developing 'Post-COVID-19-Syndrome' or 'Long Haul' symptoms may result in unknown and indeterminable complications to a person's physical, physiological, or psychological well-being that may not manifest upon infection, but could manifest at an unknown time, duration or severity, *which could impede one's ability to satisfactorily perform their professional duties in the future.*" (Assem. Com. on Public Employment and Retirement, Rep. on Assem. Bill No. 845 (2021-2022 Reg. Sess.) as amended March 31, 2021, p. 5, italics added.)

Perhaps the most telling comment as to the bill's purpose comes from the author itself, Assemblymember Freddie Rodriguez. The Assembly Floor analysis of AB 845 quotes Assemblymember Rodriguez as saying the following in support of his bill:

Last year, the Legislature passed, and the Governor signed [Senate Bill 1159] which . . . created a rebuttable presumption that essential employees who contracted COVID-19 were infected on the job and therefore, eligible for workers compensation due to that illness. . . .

[However,] what Senate Bill 1159 did not address were those same category of essential workers who were infected on the job and *subsequently retired due to COVID-19 and COVID-19 related illness*. [This bill] would, until January 2023, create a rebuttable presumption for specified front line workers that a COVID-19 related illness contracted on the job must be eligible for an *in-service disability retirement*. These employees include health care professionals, firefighters, law enforcement, and public servants to name a few. Front line workers infected on the job *and who need to retire due to COVID-19 and COVID-19 related illness* should be protected.

The symptoms of COVID-19, itself, has negatively impacted the long term health of those who contract it without regard to age, but those more advanced in age have a higher risk of serious illness and life threatening conditions like organ failure, heart problems, severe lung conditions, and blood clots. Additionally, according to the Mayo Clinic, COVID-19 has left individuals with long lasting and permanent conditions, such as heart, lung, and brain damage, blood clots and vessel problems, depression, anxiety, and fatigue.

(Assem. Floor Analysis, 3d reading analysis of Assem. Bill No. 845 (Reg. Sess. 2021-2022) as amended March 31, 2021, p. 2, italics added.)

Collectively these reports, and Assemblymember Rodriguez's statement in support of the bill, show that AB 845 was not intended to remove the burden for death benefit beneficiaries to prove that the deceased employee's COVID-19-related death was caused by his or her employment. Rather the law was enacted to relieve living employees who seek retirement due to the lingering health effects of COVID-19 from the burden of proving that the long-lasting health effects of COVID-19, such as lung and heart conditions, stem from their contraction of COVID-19 on the job. Unlike SB 1159, which specifically applied the statutory presumption to the receipt of death benefits, AB 845 is much more circumscribed limiting the presumption to members who are forced into early retirement due to lingering health effects caused by their contraction of the COVID-19 virus. For these reasons, AB 845 does not apply to Ms. Ennor's request for service-connected death benefits. She still bears the burden of proving that her husband's death was work related. (See *Kuntz v. Kern County Employees' Retirement Assn.* (1976) 64 Cal.App.3d 414, 420.)

Moreover, even if AB 845 were to apply in this instance, it merely shifts the burden of proof to the County; it does not vitiate the County's right to due process. As discussed in my July 8, 2021, letter to you, ACERA's Disability Retirement Procedures ("DRPs") provide the County with a meaningful opportunity to investigate and weigh in on Ms. Ennor's entitlement to service-connected death benefits. This existing procedural framework also aids the Board in reaching an informed decision. As you note in your July 27, 2021, email to Ms. Ennor's counsel, the documents submitted in support of Ms. Ennor's request raise a host of questions as to causation. Were AB 845 to apply in this instance, the need to apply the DRPs is heightened to ensure that



Jeff Rieger, ACERA Chief Counsel  
August 13, 2021  
Page 4

the County is afforded a meaningful opportunity to rebut the presumption, as the law provides. (See Gov. Code, § 7523.1, subd. (b).)

For the forgoing reasons, the County respectfully requests that the Board find that AB 845 does not apply in this instance, and Ms. Ennor still bears the burden of proving that her husband's death was work-related. If the Board does not feel that it has sufficient information to make such a determination, the County recommends that the Board refer this issue to a Hearing Officer to receiving briefing, hear argument, research the law, and make an appropriate recommendation to the Board. Regardless of the Board's decision concerning the burden of proof, the County requests that the Board apply its DRPs to Ms. Ennor's request for a service-connected death allowance to ensure that the County is afforded due process and that the Board is aided in making an informed decision.

If you have any questions regarding this letter, please call or email me.

Very truly yours,

DONNA R. ZIEGLER  
County Counsel

A handwritten signature in black ink, appearing to read 'Scott J. Feudale', written over a horizontal line.

By  
SCOTT J. FEUDALE  
Deputy County Counsel

cc: Ed Lester, Counsel for Maureen Ennor



## OFFICE OF THE COUNTY COUNSEL

1221 Oak Street, Suite 450, Oakland, California 94612-4296  
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DONNA R. ZIEGLER  
COUNTY COUNSEL

March 4, 2022

Alameda County Employees' Retirement Association  
Board of Retirement  
475 14th St., Suite 1000  
Oakland, CA 94612

RE: Maureen Ennor's Service-Connected Death Allowance Request

Dear Chairman Godfrey and Board Members:

I write in response to outside counsel's September 3, 2021, opinion as to whether Government Code section 7523.1's COVID-19 disability retirement presumption applies to death allowances sought under Government Code section 31787.<sup>1</sup>

Section 7523.1, subdivision (a) provides that if a member of a public retirement system "retires for disability on the basis, in whole or in part, of a COVID-19 related illness, it shall be presumed that the disability arose out of, or in the course of, the member's employment." The presumption may be rebutted by evidence to the contrary. (Gov. Code, § 7543.1, subd. (b).) Section 31787, subdivision (a) provides "[i]f a member would have been entitled to retirement in the event of a service-connected disability, but dies prior to retirement as the result of injury or disease arising out of and in the course of the member's employment, the surviving spouse of the member shall have the right to elect . . . to receive and be paid . . . an optional death allowance." There is a dispute among the parties as to whether Section 7523.1's rebuttable presumption applies to death allowances provided under Section 31787.

Outside counsel for ACERA has opined in a September 3, 2021, letter to this Board that the presumption most likely applies. Outside counsel focuses on the provision of Section 31787 which entitles a surviving spouse to a death allowance if the deceased member would have been entitled to retirement in the event of a service-connected disability. Counsel contends that determinations as to whether a member is entitled to a service-connected disability retirement are typically made under Article 10 of the County Employees' Retirement Law of 1937 and Article 10 includes various presumptions related to service-connected diseases or ailments (heart trouble, cancer, blood-borne infectious diseases, or exposure to biochemical substances). Counsel opines that these presumptions may be invoked by a member's surviving spouse if the member dies before retiring, including in the context of an application for a service-connected death allowance under Section 31787.<sup>2</sup>

<sup>1</sup> Hereinafter all statutory references are to the Government Code unless specifically stated.

<sup>2</sup> The County does not contest outside counsel's opinion that the effective date of Section 7523.1 is January 1, 2022, and that the statute expires on January 1, 2023. (See Cal. Const., Art. IV § 8(c)(2); Gov. Code, § 7523.2.) However, because Applicant may not claim benefit of this exemption, it matters not when the Board takes final action on this matter.

The County submits that outside counsel's opinion is legally infirm and should not be followed by this Board for the following four reasons.

First, outside counsel cites no authority supporting the position that surviving spouses seeking death allowances may claim benefit of the disability retirement presumptions. In fact, authority is to the contrary. Section 31787 says nothing about extending the benefit of the disability retirement presumptions set forth in Sections 31720.5-31720.9 to death allowances. (See Gov. Code, § 31787.) Moreover, at least one court cited with approval the finding that the surviving spouse bears the burden of proving that the member's death was work-related when seeking a death allowance under Section 31787. (See *Kuntz v. Kern County Employees' Retirement Assn.* (1976) 64 Cal.App.3d 414, 420) This was so notwithstanding the fact that the member's death was related to an underlying heart condition, and the Article 10 heart trouble presumption, which shifts the burden of proof to the employer, had long been in existence at the time of this decision. (See *id.* at pp. 417-420; see also Gov. Code, § 31720.5 [showing the heart trouble presumption was enacted in 1951].)

Second, outside counsel's opinion does not address the juxtaposition between the Workers' Compensation statutes, which create a similar statutory presumption related to COVID-19, but specifically provide for death benefits in the event an employee contracts COVID-19 at work and subsequently dies because of the virus, and the retirement statute related to the same issue does not. (Compare Labor Code, §§ 3212.86, subs. (a), (c) & (e), 3212.87, subs. (a), (c) & (e), & 3212.88, subs. (a), (c), and (e) with Gov. Code, § 7523.1.) Clearly the Legislature was aware that existing Workers' Compensation law—enacted less than a year before the COVID-19 retirement presumption was signed into law—created a rebuttable presumption as to entitlement to service-connected death benefits related to the COVID-19 virus. The Legislature could have, but chose not to, apply the same presumption to the retirement law governing service-connected death allowances. The fact that such language is not included in Section 7523.1 shows that the Legislature intended that the statutory presumption in Section 7523.1 only apply to living members seeking disability retirement. (See *Hennigan v. United Pacific Ins. Co.* (1975) 53 Cal.App.3d 1, 8 [“The fact that a provision of a statute on a given subject is omitted from other statutes related to similar subjects is indicative of a different Legislative intent for each of the statutes. [Citations.] “].)

Third, outside counsel also does not address the legislative history of Section 7523.1. As discussed in greater detail in the County's August 13, 2021, letter to ACERA's Chief Counsel, the purpose of the statute was to relieve members who needed to retire early due to the lingering side-effects of COVID-19 from having to prove that their disability was work related. (See County's August 13, 2021, letter at pp. 2-3.) The statute was not intended to relieve surviving beneficiaries of the burden of proving that the deceased member's COVID-19-related death was caused by his or her employment. Had the Legislature so intended, it would have been reflected somewhere in the statute's legislative history. By ignoring this legislative history, outside counsel is essentially asking

the Board to read into Section 7532.1 language that is not there, an act that the Board may not do. (Cf. *Vasquez v. State* (2008) 45 Cal.4th 243, 253, italics added [“In construing . . . any[] statute, our office is to simply ascertain and declare what the statute contains, *not to change its scope by reading into it language that it does not contain* or by reading out of it language it does”].)

The plain language Section 7532.1, its legislative history, and the fact that it differs from a similar statute enacted a year before addressing the same subject matter, collectively show a Legislative intent not to apply Section 7532.1’s COVID-19 presumption to death allowances. Thus, the Board should not follow outside counsel’s advice and instead find, in accordance with the law, that that surviving beneficiaries seeking death allowances under Section 31787 bear the burden of providing that the member’s death from COVID-19 was related to his or her employment. If the Board does not feel that it has sufficient information to make such a determination, the County recommends that the Board refer this issue to a Hearing Officer to receive briefing, hear argument, research the law, and make an appropriate recommendation to the Board.

Very truly yours,

DONNA R. ZIEGLER  
County Counsel

A handwritten signature in black ink, appearing to read 'Scott J. Feudale', written over a horizontal line.

By  
SCOTT J. FEUDALE  
Deputy County Counsel

# **Exhibit C**

**Letter from Raymond E. Frost &  
Associates, dated March 6, 2022**

Raymond E. Frost & Associates  
Attorneys at Law

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39510 Paseo Padre Parkway • Suite 300 • Fremont, CA 94538  
Tel (510) 792-5310 • Fax (510) 792-6429

March 6, 2022

ACERA Board of Retirement  
475 14<sup>th</sup> Street - Ste 1000  
Oakland, CA 94612

*Re: Maureen Ennor's Claim for Service Connected Surviving Spouse Allowance Request*

Dear Chairman Godfrey and Board Members:

As noted in the General Counsel's introductory memo and exhibits, attached to your September 16, 2021 Agenda, the central question ACERA must determine is whether or not Deputy Oscar Rocha contracted the coronavirus at work (rendering his death to be "service connected") or outside of work (rendering his death to be "non-service connected"). As a preliminary matter, the Board must consider the effect of Gov't Code Section 7523 on the present case. Section 7523 creates a rebuttable presumption that a safety member's disability due to Covid-19 is service connected.<sup>1</sup>

First, Mr. Rieger presents certain facts that suggest the "possibility" of Mr. Rocha contracting the coronavirus outside of the work environment rather than on the job (to wit: that Deputy Rocha's wife had contracted Covid-19 in June of 2020 at or close to Deputy Rocha's own hospitalization for acute hypoxic respiratory failure due to Covid-19, and his subsequent death a month later). Second, he argues that (1) the language of the statute (Section 7523) references only disability, not death, resulting from the coronavirus, and (2) the statute's effective date is more than a year after Deputy Rocha's date of death.

Mr. Rieger spends a good deal of time examining the legislative history of the bill, attempting to demonstrate that there was no intent to include a service member's death within the applicable parameters of the statute. The absence of any reference to a service member's death (or corresponding death benefits) in the text of the statute, together with a statutory effective date well beyond Deputy Rocha's actual death, he argues, cumulatively renders the presumption of Section 7523 inapplicable to the case at bar.

Mr. Rieger's presentation notwithstanding, there are both facts that support the position that Deputy Rocha contracted the coronavirus at work, and facts that support application of the provisions of Section 7523 to Deputy Rocha's Covid-19 related death. First, Mr. Rieger's own

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<sup>1</sup> Claimant acknowledges that the General Counsel's memo is a summary of the issues regarding Ms. Ennor's claim for a Service-Connected Surviving Spouse Allowance and not a legal opinion on the issues.

Raymond E. Frost & Associates  
Attorneys at Law

ACERA Board of Retirement

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March 6, 2022

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timeline of events leading to Deputy Rocha's death (and Mr. Biegers's supporting documents concerning same) evidence the following facts:

- (1) While Deputy Rocha was working at the Santa Rita jail, the Sheriff's Office noted the first confirmed case of Covid-19 among the prison population on April 4, 2020;
- (2) As of April 10, 2020, 15 inmates at Santa Rita had tested positive for Covid-19, together with two (2) staff members at the Santa Rita jail;
- (3) On April 11, 2020, Deputy Rocha presented at John Muir Hospital ER, where he was diagnosed with Covid-19;
- (4) From June 9, 2020 to June 17, 2020, three (3) Sheriff's Office employees test positive for Covid-19. Additionally, two employees working at the Santa Rita jail test positive for Covid-19 on June 17, with a third employee at Santa Rita testing positive on June 16;
- (5) On June 29, 2020, Deputy Rocha presented for a second time at John Muir Emergency Room, and is diagnosed with acute hypoxic respiratory failure and Covid-19, 10 days after his wife tests positive for the virus; and
- (6) On July 23, 2020, Deputy Rocha died of acute respiratory failure due to Covid-19.

While Mr. Rieger focuses on the proximity of the date of Deputy Rocha's wife's Covid-19 diagnosis, and the date of Deputy Rocha's admission to John Muir for acute respiratory failure related to Covid-19, he disregards (1) Deputy Rocha's ongoing exposure to the virus from the jail population at Santa Rita prior to his initial contraction of the virus, and (2) the close proximity to the dates of the Santa Rita staff Covid-19 infections, including Deputy Rocha's initial diagnosis of Covid-19 on April 11th, all of which occurred prior to his wife contracting the virus. The fact that Deputy Rocha's initial contraction of the coronavirus corresponds closely to the documented presence of the virus among the jail population and staff at Santa Rita (Deputy Rocha's work environment) and, as noted, prior to his wife's later Covid-19 diagnosis, all strongly suggests that he contracted the disease within the course and scope of his employment. In other words, it wasn't just a possibility (that he contracted the virus at work), it was more likely than not that he contracted the virus while working at the Santa Rita facility.

Secondly, and buttressed by such facts, is the effect of applying the presumption that would be

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available to Deputy Rocha's widow, should the Board rule on this matter after the effective date of January 1, 2022. This brings us to the issue of whether the Section 7523 presumption applies in the present case. Mr. Rieger has made a plausible argument as to why the statutory presumption should not apply. However, although he is privy to the opposing viewpoint articulated by Ms. Dunning of Nossaman, LLP, conspicuous by its absence is any objection to her argument. Between the two positions, Ms. Dunning is the most persuasive. In summary, her argument on the issue of whether the presumption of Section 7523 applies to death benefits or only to disability claims is as follows:

- (1) Gov't Code Section 31787 provides that if a service member (such as Deputy Rocha) who would have been entitled to retirement due to a service connected disability dies prior to retirement due to an injury or disease arising out of, or in the course and scope of that member's employment, the surviving spouse shall have the right to elect an optional death benefit.
- (2) An ACERA member's (such as Deputy Rocha) right to retirement in the event of a service-connected disability is usually determined under the provision of CERL. Article 10 contains various presumptions concerning service-connection disabilities. The retirement provisions of CERL may be invoked on behalf of a member or a member's spouse if the member dies before retiring. This includes application for a service-connected death allowance under Section 31787.
- (3) While County Counsel is correct that the language of the statute only references disability retirement and not death benefits, that terminology is common when considering other service-connection presumptions under CERL. Further, Section 31787 applies to any applicable service-connection presumption under disability law, (which would include the presumption under Section 7523).
- (4) Therefore, the Covid-19 presumption should be available to otherwise eligible surviving spouses under Section 31787 (such as Deputy Rocha's widow), just as is any other CERL disability retirement presumption.

A note need be made concerning Mr. Rieger's dissertation on the legislative intent behind Section 7523 (in which counsel found nothing in the legislative history of the bill to suggest that this presumption was intended for anything but disability retirement benefits). Assuming, for the moment, that Ms. Dunning's analysis is correct (which it appears to be), there would be no need for the members of the legislature to comment on the applicability of this (then proposed) presumption to death benefits for an eligible spouse of a service member who dies of exposure to



Raymond E. Frost & Associates  
Attorneys at Law

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Covid-19. The reason that there would be no need to make such comments is because, under existing law (i.e., Section 31878 and the administrative provisions of CERL), the Section 7523 presumption would have already been available to service-connected Covid-19 death benefits. In fact, given the above provisions that render the presumption applicable in death benefit cases, it would have been more likely to assume that the legislative history would have evidenced an express intent to exclude the presumption from death benefit cases if such an exclusion was intended. No such exclusory statements exist.

Third, Ms. Dunning notes that the effective date of Section 7523 is January 1, 2022. She also properly notes that, under California law, this effective date, as it relates to the instant case, is the date that the Board finally approves or denies the application (for a service-connected death benefit), citing *Wilmot v. Contra Costa County Employees' Retirement Assoc.* (2021) 60 Cal.App.5th 631, 654.

Therefore, given all the above, there is sufficient evidence that Deputy Rocha was diagnosed with Covid-19 at or about the time of the documented outbreak of the virus among the jail population and staff at Santa Rita where Deputy Rocha worked. These facts are taken from County Counsel's own documents previously submitted to this Board. This initial diagnosis and treatment prior to Deputy Rocha's wife having contracted the coronavirus suggests that it is more likely that she caught the virus from him, not the other way around. Deputy Rocha's hospitalization after his wife's diagnosis was for an acute respiratory condition leading to his death; it was not his first exposure or bout with the disease. Hence, it is a completely reasonable conclusion that Deputy Rocha contracted the virus at work, and subsequently died from it.

Finally, there are the equities of the present case. The legislature and governor obviously saw a need to address the fact that front line first responders (police, fire, EMT, etc.) were at a high risk of exposure to the Covid virus, given the nature of their work and their close interaction with varied groups among the general population. They suffered higher Covid numbers than the population at large, with health consequences that rendered some unable to return to work. Although the likelihood of exposure to Covid-19 at work was high for these public service employees, a factual determination of exactly how and where the virus was contracted proved difficult, if not impossible, to state with any degree of medical certainty. Hence, the Covid-19 presumption of Section 7523.

If one were to honestly state whether the Section 7523 presumption should apply to the present case, I suspect the answer from most would be and emphatic, "Yes!" In fact, this is exactly the kind of case that this presumption was intended to address. To deny Deputy Rocha's widow the application of this statutory presumption would be to deny her a statutory right to which she is

Raymond E. Frost & Associates  
Attorneys at Law

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properly entitled on the grounds that Deputy Rocha died, rather than retired, due to a service-connected Covid-19 exposure, or that he simply died at the wrong time.

The County is not denied its due process rights by allowing Deputy Rocha's widow to invoke the statutory presumption. As noted by County Counsel, the presumption merely shifts the burden of proof to the County.

Therefore, it is respectfully submitted that (1) the Board adopt Ms. Dunning's analysis concerning both the applicability of the Section 7523 Covid-19 presumption to service-connected death benefits, and (2) the Board provide Deputy Rocha's widow the opportunity to invoke this presumption by scheduling a final ruling on her application on or after Section 7523's effective date of January 1, 2022.

Respectfully,

RAYMOND E. FROST

REF:\*\*

## **NEW BUSINESS**

- 7.A. Motion to direct the Chief Executive Officer (or his designee) to vote ACERA's Proxy on behalf of the Board of Retirement at the State Association of County Retirement Systems (SACRS) Spring Conference Business Meeting.**



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*Office of the Chief Executive Officer  
Office of Administration*

DATE: March 17, 2022  
TO: Members of the Board of Retirement  
FROM: Dave Nelsen, Chief Executive Officer *DN*  
**SUBJECT: SACRS Proxy Voting**

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Twice each year, the State Association of County Retirement Systems (SACRS) requests submission of a Voting Proxy Form which, designates the member agency's representative(s) who will vote for the Board of Retirement at the business meeting during the conference. The items for vote at the Spring Conference Business Meeting were not available for this Board of Retirement meeting, but will be presented and direction can be provided at the April Board meeting.

**Recommendation**

Staff recommends that the Board of Retirement select the Chief Executive Officer (or his designee) to vote ACERA's proxy on behalf of the Board at the SACRS Spring Conference Business Meeting.

Enclosure: 1) SACRS Proxy Voting Form

**ENCLOSURE 1**



## SACRS VOTING PROXY FORM

The following are authorized by the Alameda County Retirement Board to vote on behalf of the County Retirement System at the upcoming SACRS Conference

(if you have more than one alternate, please attach the list of alternates in priority order):

Dave Nelsen: Voting Delegate  
Kathy Foster: Alternate Voting Delegate

These delegates were approved by the Retirement Board on 03/17/22.

Signature: \_\_\_\_\_  
Print Name: David Nelsen  
Position: Chief Executive Officer  
Date: March 17, 2022

Signature: \_\_\_\_\_  
Print Name: Kathy Foster  
Position: Assistant Chief Executive Officer  
Date: March 17, 2022

The person authorized to fill out this form and submit electronically on behalf of the Retirement Board:

Signature: \_\_\_\_\_  
Print Name: Dave Nelsen  
Position: Chief Executive Officer  
Date: March 17, 2022

Please send your system's voting proxy by April 28, 2022 to Sulema H. Peterson, SACRS Executive Director at [Sulema@sacrs.org](mailto:Sulema@sacrs.org).

# **NEW BUSINESS**

**7.B. Chief Executive Officer's Report.**



*Office of the Chief Executive Officer  
Office of Administration*

DATE: March 17, 2022  
TO: Members of the Board of Retirement  
FROM: Dave Nelsen, Chief Executive Officer *DN*  
SUBJECT: Chief Executive Officer's Report

**Senior Manager Recruitment**

Assistant CEO for Operations: Lisa Johnson will begin employment March 21<sup>st</sup>.

**Committee/Board Action Items**

**ASSIGNED FOLLOW-UP ITEMS**

Follow-Up Board Item	Assigned Senior Leader	Estimated Completion Date	Completion Date	Notes
Develop ACERA Re-Opening Plan.	Dave Nelsen	April 2022	On-going	The general guidelines of the Plan have been developed and implemented. We are responding to changes as necessary based on new information.
Board Strategic Planning	Dave Nelsen	Summer 2022		Beginning in May we will begin a Strategic Planning process with the Board.

**Conference/Event Schedule**

None

**Other Items**

COVID-19 Responses

As COVID restrictions lift throughout the state, and locally, ACERA will begin to ramp up our opening to the public. This month we will re-open for counseling by appointments and drop-ins for leaving documents/general questions. We will slowly build to being open every day of the week for regular hours, depending upon continued lessening of the pandemic. At this time, masks and social distancing are still required in County offices for employees and the public. We will continue to monitor the information available and consult with the County regarding plans to phase in our re-opening.



The long term staffing plan for the organization will include remote work as a team member's work requirements allow. The expectation of workers has changed. In order to be competitive in the labor market, particularly in the Bay Area, remote work will need to be a part of the ACERA culture. While this may create greater challenges in building effective teams and maintaining a positive work culture, I believe the benefits to work-life balance, recruitment and retention will make the challenges worthwhile. Leaders will need to be more intentional with the time spent in the office, and more creative in promoting collaboration and teamwork.

### *Pension Administration System Update*

The project is continuing to work through its phases. We have completed the first two deliverables, and we are now working on Deliverable Three. We continue to work with the other employers on the new transmittal file layout. Additionally, we are working our On-Base enhancements and integration into the PAS project schedule.

### *Russian Divestment*

As discussed at the March 9th Investment Committee meeting, the issue of divestment from Russian holdings and investments is being discussed world-wide. Governor Newsom called for three largest state pension funds to divest from their holdings, and SB 1328 was introduced that would require Russian divestment. What is unique about this bill, is that for the first time in memory, a divestment bill includes the CERL systems. Eric Stern and I presented to a joint legislative pension hearing on behalf of SACRS on Wednesday morning, and questions of divestment came up. We discussed the difficulty of a one size fits all solution for our 20 unique systems, but there is definitely some legislative desire to apply this to a broader spectrum of the pension systems than typically done. I will keep you informed as more information on this bill comes in.

### *Staff Transitions*

As we plan for the departure of Kathy Foster from her role as Assistant CEO of Benefits, I will be looking at posting for the position in the near future. I would prefer to have some overlapping time with the new person and Kathy, and will attempt to plan the recruitment accordingly. Kathy has been very gracious in giving the organization significant advance notice of her departure, which will allow us to plan accordingly. She is an irreplaceable asset to ACERA, but we will move forward in a thoughtful manner.

### *CALAPRS Conference*

The Conference ended on March 8<sup>th</sup>, and had a number of informative sessions. I came back with many follow up items, particularly as it relates to what the options are when a system becomes fully funded, and succession planning. Kudos should be given to Vijay and Harsh who developed and presented with a panel on Cyber Security. They provided practical steps and important questions to answer with regard to protecting our systems from cyber threats. The panel was well received. Great job representing ACERA Vijay and Harsh!

**Key Performance Indicators**

Below are the high level performance indicators for ACERA, with the latest scores included:

Scorecard KPI	2022 Performance Goal
<b>PRUDENT INVESTMENT PRACTICES</b>	
Portfolio Performance vs. Policy Benchmark	<i>Annualized 10-year return will meet or exceed Policy benchmark at the total fund level</i> <b>December of 2021: We were .02 % above the benchmark.</b>
<b>EFFECTIVE PLAN ADMINISTRATION</b>	
Actual Spent vs. Approved Budget	<i>On budget or 10% below 2022 approved budget</i> <b>As of end of January 2022: 10% under budget.</b>
<b>COMPREHENSIVE ORGANIZATION DEVELOPMENT</b>	
Employee Engagement Survey Results	<i>80% of responses in top two rating boxes on the question: "Is ACERA a great place to work?"</i> <b>As of the latest survey (October of 2021): 72.7%.</b>
<b>SUPERIOR CUSTOMER SERVICE</b>	
Service Excellence Survey	<i>80% of responses in top two rating boxes on the question: "Did ACERA meet or exceed my expectations for my customer service experience?"</i> <b>For 4th Quarter of 2021: 93%</b>

**CLOSED SESSION**

**See Agenda Items 5A and 5B**

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