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INITIATIVE COORDINATOR
ATTORNEY GENERAL'S OFFICE

Hon. Rob Bonta
Attorney General
1300 I Street, 17th Floor
Sacramento, California 95814

Attention: Ms. Anabel Renteria
Initiative Coordinator

Dear Attorney General Bonta:

Pursuant to Elections Code Section 9005, we have reviewed the proposed constitutional initiative regarding public sector unions and collective bargaining (A.G. File No. 21-0008, Amendment #2).

BACKGROUND

Public Employers in California

Thousands of Governmental Entities Across State. State and local government in California consists of state governmental entities that serve the entire state (including the California State University [CSU] and University of California [UC] higher education systems) and a network of local governments that provide services to jurisdictions across the state. There are a variety of local governments, including counties, cities, K-12 school districts, community college school districts, and special districts (for example, fire or water districts). In total, there are more than 5,000 state or local governmental entities in California.

State and Local Governments Employ 1.6 Million Full-Time Employees Across State. According to the U.S. Census Annual Survey of Public Employment and Payroll, there were 1.6 million full-time state and local public employees in California with a total annualized payroll cost of $145.5 billion in March 2020. These employees perform a variety of jobs across the state. The U.S. Census categorizes the employees by government function. By far, the government function that employs the most full-time employees is K-12 education—representing about one-third of the total number of full-time public employees in California. More than one-half of full-time public employees work in either K-12 education, higher education, or police protection.

Civil Service

Most Public Employees Part of a Civil Service or Similar System. Voters established the California state civil service in 1934 with the approval of what is today Article VII of the State

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Constitution. All state employees are in the civil service unless specifically exempted by the Constitution. These constitutional exemptions include all employees of the legislative and judicial branches, UC, CSU, the Governor's Office and gubernatorial appointments, and the Lieutenant Governor's Office. Under the civil service, once an employee has passed a probationary period, their position in the civil service becomes permanent. The California Supreme Court has long recognized that an employee with permanent status has a property interest in their employment. As such, employees with permanent civil service status are entitled to due process if they are subject to disciplinary action. Although the state civil service system only applies to state employees, most public sector workers in California are not "at will" employees and, instead, work under a system that provides employees some level of due process to challenge disciplinary action.

Civil Service Based on Merit Principle. The state civil service was modeled after the federal civil service. In the case of both the federal and state systems, the purpose of the civil service was to end the "spoils system" in which personnel decisions were based on political loyalties rather than a person's qualifications. The goal of the system is to have an efficient government comprised only of competent and qualified public servants. Accordingly, the Constitution requires that appointments and promotions in state government be made under a general system based on merit determined by competitive examination. Over the decades, additional statutes, rules, and practices have been built on the original constitutional framework of the 1930s to define how the merit principle is used in state employment decisions.

Employment Decisions Largely Based on Competitive Examination and Interviews. Under the merit principle, the state organizes state jobs into standardized job classifications that outline the minimum qualifications of a job and the salary ranges of the job. Positions in each classification generally must be filled on the basis of a competitive examination that is specific for the classification. The examination may consist of a written test, an oral test, a performance test, an agility/physical ability test (usually for law enforcement classifications), or an application with questions about the candidate's education and experience. During the hiring process, a candidate first must attain eligibility for the position by achieving an eligible score on the exam in order to be eligible to be interviewed for the position. Once hired, an employee generally holds their appointment subject to the satisfactory completion of a probationary period. After the successful completion of the probationary period, employees gain the permanent civil service status discussed earlier. Many public sector employees must go through a somewhat similar hiring process as the state civil service in order to determine if a candidate is qualified for a position.

State Personnel Board (SPB). The State Constitution establishes and charges SPB with overseeing the merit-based, job-recruitment and selection process for the hiring of state employees. In this role, SPB provides direction to state departments and audits state departments for merit system compliance. In addition, SPB serves as the adjudicating body that considers alleged violations of civil service law that are filed by employees, applicants, and members of the public. Among the types of cases that SPB considers are disciplinary decisions appealed to the board by employees, for example, employee claims of unlawful termination. During SPB proceedings, an employee may be represented by private counsel or a union representative.

Process to Establish State Employee Compensation Before Collective Bargaining

Prior to 1982-83, Compensation Established Through Budget and Statute. The first year when state employee compensation was established through the collective bargaining process was fiscal year 1982-83. Prior to that year, employee compensation was established through either statute (for example, new health benefits and pension benefits were established by state law) or through the budget (for example, annual salary increases were established in the state budget). To establish annual adjustments to state employee salaries, SPB annually would report to the Legislature and Governor (1) a comparison of state salaries and benefits with salaries and benefits received in nonstate employment and (2) recommendations on salary and benefit increases to be included in the budget. Through the budget process, the Legislature and the Governor would determine what compensation increases state employees would receive and would appropriate the funds necessary for that compensation increase.

Collective Bargaining

Collective Bargaining Process. Prior to collective bargaining, public employers could meet with associations representing employee groups to solicit input on compensation and other terms and conditions of employment; however, the governing body ultimately would act unilaterally to establish employee compensation. Collective bargaining is a bilateral process whereby employees and employers negotiate wages, benefits, and other conditions of employment. Typically, bargaining is delegated by the governing body of a government to an authorized representative. After the authorized government representative and employee representatives reach an agreement, the governing body and union members each determine whether or not to approve the agreement. Once the agreement is approved, it generally becomes a binding contract between the employer and employees. Most public employees are represented in the collective bargaining process. Types of employees who are most commonly excluded from the collective bargaining process include managers, supervisors, and other employees involved in making management decisions or developing management's position at bargaining.

Collective Bargaining Processes Established Under State Law. In California, public sector collective bargaining was established by a series of statutes, each pertaining to a specific type of public employee. The first of these statutes was the Meyers-Milias-Brown Act (MMBA) in 1968, which made California the second state in the country to allow public sector collective bargaining. The MMBA authorized collective bargaining between municipal and county governmental employers and their employees. By the late 1970s, collective bargaining had been extended to the vast majority of public employees in California. Specifically, collective bargaining was extended to K-12 school district and community college school district employees under the Educational Employment Relations Act of 1975, state employees under the Ralph C. Dills Act of 1978, and the employees of UC and CSU systems under the Higher Education Employer-Employee Relations Act of 1979. Over the ensuing decades, additional statutes were adopted related to collective bargaining for employees of specific transit districts and employees of the judicial branch.

The State Collective Bargaining Process, as an Example. In the case of state employees, the Governor negotiates with employees who are organized into 21 bargaining units based on job classifications. About 85 percent of state employees are represented in the collective bargaining process. During negotiations, the Governor is represented by the California Department of Human Resources (CalHR) and each bargaining unit is represented by a union. State law generally requires CalHR to submit to the Legislature and union a compensation study detailing compensation and demographics of a bargaining unit compared to other competing employers (for example, cities, counties, federal government, and/or the private sector) six months before a memorandum of understanding (MOU) expires. When CalHR and a union reach an agreement, the parties submit to the Legislature an MOU. The provisions of the MOU generally cannot go into effect until the agreement is approved, or ratified, by both the Legislature and union members. Generally, prior to approving the MOU, the Legislative Analyst's Office (LAO) must provide the Legislature an assessment of the agreement. The LAO uses CalHR's compensation study to evaluate compensation increases included in the agreement. In addition, through the annual budget act, the Legislature determines whether to fund the provisions of a previously ratified MOU.

Public Employment Relations Board (PERB) Adjudicates Labor Disputes. PERB is a quasi-judicial administrative agency charged with administering the statutes that establish public sector collective bargaining in California. In its role, PERB (1) ensures these laws are implemented and applied consistently and (2) mediates and adjudicates contract disputes between public employers and employees. For example, a union or employer that thinks the other is not meeting in good faith may bring the issue to PERB for adjudication.

Public Employer Has Significant Authority to Set Compensation for Employees Not Represented by Collective Bargaining. Some public employees are excluded from the collective bargaining process. These employees generally include managers or supervisors and staff who are involved in developing an employer's position in the collective bargaining process. For these employees, the public employer has broad authority to set compensation. However, compensation for these types of employees often is very similar to what is provided to similar employees who are represented in the collective bargaining process. For example, state employees who are excluded from collective bargaining typically receive the same salary increases received by rank-and-file employees of the same job-type. This is done in order to avoid "salary compaction," where the difference between rank-and-file and management salaries is not large enough to create an incentive for employees to take on the additional responsibilities of management.

Public Employee Compensation

Three Main Elements of Compensation. Public employees typically earn a compensation package that consists of a salary, health benefits for the employee and eligible dependents, and retirement benefits that are earned today but are not received until after the employee has retired. As we discuss in greater detail below, this general structure of the public employee compensation package was in place many decades before public sector collective bargaining was established. (In addition to these pieces of compensation, most public employees receive

Medicare benefits and some receive Social Security benefits. Teachers, firefighters, and peace officers generally do not receive Social Security benefits.)

- ***Salary.*** Most public employees are paid a monthly salary; however, some public employees are paid wages on an hourly basis for time worked.
- ***Health Benefits.*** Most public employers provide health benefits to their employees and eligible dependents. Typically, the employer either negotiates directly with providers or contracts with another entity to administer the health plans available to their employees.
- ***Retirement Benefits: Pension and Health Benefits.*** The two most common retirement benefits for public employees are pension and retiree health benefits. Pension benefits provide employees income in their retirement. Retiree health benefits take different forms, but, typically, consist of employers paying a specified dollar amount towards retired employees' health premiums before they are eligible to receive Medicare benefits. In many cases, this benefit also helps provide health insurance coverage to retirees' dependents. In some cases, like for state employees, the employer provides supplemental coverage to Medicare after the retiree is eligible for Medicare.

The relative magnitude of cost for each of these elements of compensation vary by employer. The reasons for the variation depend on a variety of factors, including the level of the benefits provided, the degree to which employers prefunded—or set aside—retirement benefits over the course of an employee's career, and past investment returns on any money that had been set aside for this purpose. In the case of state employee compensation (excluding UC staff), in 2019-20, the state spent a total of $34 billion to pay for active and retired employees' salary, health benefits (including dental and vision), retirement benefits (including pensions and retiree health benefits), and prefunding retiree health benefits. Of this total, state costs towards salary, health benefits, and retirement benefits constituted about 63 percent, 18 percent, and 19 percent, respectively.

Employers Adjust Elements of Compensation to Compete With Other Employers in Labor Market. As we discuss in greater detail below, each core element of compensation has different cost pressures. These different cost pressures result in each element of compensation growing at different rates. Because not all employers provide the same mix of compensation, employers periodically compare the total compensation they provide their employees with the total compensation provided by other public and private employers. If an employer finds that their compensation is below levels provided by other employers or they are experiencing troubles recruiting or retaining qualified candidates for positions, the employer might increase the compensation it provides its employees.

Salary

Salary Ranges Typically Standardized by Position. In most cases, public employers have a standardized salary range for a position. Employees move up the salary range in each year that they meet expectations until they reach the top of the salary range. For example, a state classification might have a salary range of between \$50,000 and \$63,000. A state employee typically would start at the bottom of the range and receive annual "merit salary adjustments" of 5 percent, if approved by their management, until they are at the highest end of the salary range. In order to receive a salary that is above \$63,000, the state employee would need to apply for a promotion to a classification for which they are qualified that has a higher salary range. Pay scales can be structured so that—in addition to employees' tenure establishing their pay within a salary range—people with more experience or more education are eligible to receive higher salaries within the same job title. For example, a high school teacher with a master's degree and ten years of service would be eligible to earn a higher salary than a high school teacher whose highest level of education is a bachelor's degree but who also has ten years of service or a high school teacher with a master's degree but who has only worked for one year—this type of salary range is referred to as "step and columns."

Most Flexible Element of Compensation. Salaries provide the greatest flexibility to increase or decrease employees' total compensation to respond to economic conditions without significantly altering the structure of the compensation package. If an employer determines that the total compensation it provides to a particular classification is below the level of compensation that other employers provide for similar classifications, increasing the salaries of that classification can bring the total compensation for the classification in line with market averages. Similarly, if a public employer experiences severe or sudden revenue losses, temporarily reducing salaries through a furlough or similar program can provide employers fiscal relief without initiating layoffs or making other permanent reductions to the workforce.

Changes to Salary Subject to Collective Bargaining. Increases and decreases in salary are subject to collective bargaining. For example, the uncertainty around state revenues in 2020-21 led the state and state unions to agree to significant salary reductions under the Personal Leave Program 2020. While salary is subject to collective bargaining, the Legislature has ultimate authority over state employee salaries through its power of appropriation. In each budget, the Legislature can choose to increase or decrease salary levels notwithstanding salary levels that are established by labor agreements. In the event that the Legislature does not appropriate sufficient funds to fully fund a provision of an MOU—for example, by assuming lower than agreed upon salary levels—the agreement is reopened and the Governor and affected union may negotiate a new agreement.

Primary Cost Pressure: Inflation in the Broader Economy. The cost of goods and services in the broader economy typically increase year over year. This price inflation results in a dollar in one year having less purchasing power than it had in prior years—meaning that a person effectively cannot buy as much in one year with that dollar as they could have in prior years. As a result, salaries typically are increased periodically in order to maintain employees' purchasing power.

Health Benefits

A Long-Standing Benefit to Public Employees. Health benefits as an employer sponsored or at least partially funded benefit has been a long-standing element of public employee compensation. In the case of the state, it began administering health benefits for state employees in 1961. Prior to 1961, state employees were not provided health benefits from the state; however, beginning in 1931, state employees could purchase group health and life insurance through their membership in the California State Employees Association. When the state established its employer-sponsored health benefit in 1961 through statute, one of the arguments in support of the legislation was that federal and local government employers provided employer-sponsored health benefits to their employees.

CalPERS Administers Health Benefits for the State and Many, but Not All, Local Governments. The state contracts with the California Public Employees' Retirement System (CalPERS) to administer the health benefits it provides to state employees and retirees. Many local governments also contract with CalPERS to administer health benefits for their employees and retirees. As the administrator of these benefits, CalPERS oversees the health benefits program and determines the benefit design, including any copays and deductibles, and providers. Each year, CalPERS negotiates premiums with providers. In total, CalPERS health plans cover more than 1.5 million lives, making it the second largest purchaser of health insurance in the nation behind the federal government. Public employers who do not contract with CalPERS to administer health benefits either contract directly with health care providers or use a broker to negotiate the health plans offered to employees.

Employees Typically Pay a Portion of Premium Costs. Although the precise funding structure for health benefits varies by public employer, often, the public employer and employee share the health premium costs. A common arrangement is for the employer to contribute up to a specified dollar amount towards employee health premiums with employees paying the balance. Health benefits are subject to collective bargaining. For example, the state's labor agreements specify the state's contribution towards employee health benefits (in many cases, these contribution levels also are codified in statute).

Primary Cost Pressure: Health Premium Growth. Health premiums consistently have outpaced inflation and the growth in public employees' earnings for the past couple of decades. The factors that drive premium growth are complex but include factors related to cost and utilization of medical services (for example, the cost of inpatient and outpatient services or pharmaceuticals), economic trends, and the demographics of the people covered by the health plan. We expect public employer health premiums to continue growing at a rate faster than inflation for the foreseeable future.

Pension Benefits

State and Local Governments Sponsor "Defined Benefit" Pension Plans for Their Employees. Most full-time public employees earn a defined benefit pension that guarantees the employee a certain level of income after they retire. This type of benefit has been part of public employee compensation for some workers for more than 100 years. (The California State Teachers' Retirement System [CalSTRS] was established in 1913 to provide teachers a pension benefit. Similar benefits were established for state and local government employees in the 1930s.) The state provides defined benefit retirement plans for its employees and for those of public schools and community colleges. CalPERS administers the retirement plans for state employees, CSU faculty and staff, and nonteaching school and community college employees.

The UC administers its own retirement plan for its faculty and staff. CalSTRS administers plans for school and community college teaching employees. Local governments generally also provide these types of plans for their employees. Some cities, counties, and special districts have their own retirement boards to administer their plans. Most cities, counties, and special districts have CalPERS or their county retirement systems administer their plans.

Pension Benefits Based on Formula. When a government employee retires, they receive a pension that is determined using a formula. A typical formula is the number of years of service credited to the employee multiplied by a rate of accrual (determined by the employee's age at the time of retirement) multiplied by the employee's final salary level. Often, retirees receive a cost-of-living adjustment each year to at least partially offset erosions in purchasing power resulting from inflation. For example, the rate of accrual for a typical state worker hired before 2007 who retires at the age of 55 years is 2 percent per year. If this employee earns $60,000 in their final year of service before retiring after working 18 years for the state, the employee will retire with an annual pension of $21,600 (18 x .02 x 60,000). This pension may increase by up to 2 percent each year, depending on actual inflation. (In the event that the employee's pension allowance falls below 75 percent of its original purchasing power, the state provides additional inflation protection.)

Pension Benefits Considered a Contractual Obligation. Employers have little flexibility to change pension benefits for current employees or retirees. Provisions related to pensions sometimes are included in collective bargaining agreements or in statutes. Both the U.S. and California Constitutions contain a clause—known as the contract clauses—that prohibit the state or its voters from impairing contractual obligations. Interpreting these contract clauses, California courts have ruled for many decades that pension benefits generally vest on the day an employee is hired. As a result, pension benefits for current and past public employees can be reduced only in rare circumstances. This interpretation of the contract clauses is referred to as the "California Rule." In contrast, governments can make changes to future employees' pension benefits without providing a comparable benefit to offset any reductions.

Defined Benefit Funding. Defined benefit plans have three main sources of funding, discussed below. (In the case of funding for CalSTRS pension and related benefits, however, state contributions provide a fourth source of funding.)

- ***Investment Returns.*** Investment returns are the biggest component of defined benefit funding. In the case of CalPERS, the system reports that most pension benefits paid to retirees are paid from investment returns. Revenues from investment returns vary significantly year to year depending on market performance.

- ***Employee and Employer Contributions for Normal Cost.*** The normal cost is the amount estimated to be necessary—combined with future investment returns—to pay for benefits earned by employees in that year. These costs typically are split between the employer and employee, with the employer paying about half (or somewhat more) of the total cost.

- ***Employer Contributions for Unfunded Liabilities.*** To the extent that a pension plan does not have enough money over time to pay for benefits, an unfunded liability

> results. Employers generally bear all of the responsibility to pay for unfunded liabilities. Pension boards typically set employer rates to pay off any unfunded liabilities over a specified number of years—known as an amortization period. The longer an amortization period, the lower an employer's annual costs to pay off any unfunded liabilities but the higher the employer's total costs over the entire amortization period. Because a fund can incur losses or gains in any given year, the unfunded liability—and consequently, the employer's contributions—can vary year to year depending on investment returns. A plan is considered fully funded when actuaries determine that the plan—based on an assumed rate of future investment returns and other assumptions—has sufficient assets to pay for all future benefit payments earned to date.

In most cases, the amount of resources from each of these three sources fluctuates based on market conditions, actuarial assumptions, and other factors.

Pension Boards Plenary Authority and Fiduciary Responsibility. In 1992, voters approved Proposition 162. This proposition amended the California Constitution to give the board of each public pension system plenary authority and fiduciary responsibility for investment of moneys and administration of the pension system. As a result of this proposition, the California Constitution makes a pension board the exclusive authority over the investment decisions and administration of its respective pension system. In managing the pension system, pension boards determine how much risk the pension fund should be exposed to by determining the fund's investment asset allocation. Each pension board also adopts all actuarial assumptions used to calculate normal cost and unfunded liabilities—including the amortization period of the unfunded liabilities and discount rate. Consequently, the pension board determines how much money employers must contribute in a year to fund the pension benefit. Employers typically have very little flexibility to pay less than what the pension system indicates is necessary.

Public Employees' Pension Reform Act of 2013 (PEPRA). In 2012, the Legislature approved Chapter 296 (Furutani, AB 340), referred to as PEPRA. This legislation made a number of changes to state law intended to reduce future costs of pension benefits, including reducing pension benefits for state and local government employees hired after 2013 and establishing a standard that employees contribute one-half of the normal cost. The law has reduced employer costs relative to what they otherwise would have been and the savings resulting from the law are expected to grow as the state and local workforce turnover.

Primary Cost Pressure: Growth of Unfunded Liability. In most cases, employer pension costs have increased sharply over the past couple of decades because of large unfunded liabilities that were incurred due to a combination of (1) lower-than-assumed investment returns and (2) changes in actuarial assumptions. Since the employer is solely responsible for unfunded liabilities, growth in the unfunded liability directly affects employers' costs. Further, since the pension boards have plenary authority to administer the systems and the California Rule protects pension benefits earned by current employees, employers generally have little recourse but to pay the increased costs.

Retiree Health Benefits

State and Many Local Governments Provide Retiree Health Benefits. The state began providing health benefits to its retirees in 1961—before the federal government established Medicare. The benefit requires employees to work for the state for a certain number of years in order to receive a portion of a maximum benefit available to state employees. If an employee retires from the state with 15 years of service, they are eligible to receive 50 percent of the maximum benefit. In order to receive the full benefit, state employees must retire with at least 20 or 25 years of service, depending on the vesting schedule. Eligible state employees receive a benefit for life, even after they are eligible for Medicare. Many public employers provide similar retiree health benefits to their employees. Others provide less generous benefits—either by providing a lower benefit or by only providing the benefit until the retiree is eligible for Medicare. Some public employers do not provide retiree health benefits to their employees.

Few Governments Have Fully Prefunded Retiree Health Benefits. Although governments have provided a retiree health benefit for a long time, most did not set aside money to prefund the benefit until recently. Instead, employers paid for the benefit on a pay-as-you-go basis after employees retire and begin receiving the benefit. As a result, there are large unfunded liabilities associated with retiree health benefits.

Employer Contractual Obligations to Provide Benefit Depends on Circumstances. While the California Rule results in public employees generally having a contractual right to a specified level of pension benefit, this broad characterization does not apply to retiree health benefits. Depending on how the benefit was established and how it has been administered, some employers might have flexibility to reduce or eliminate the benefit while other employers might have very little flexibility. In many cases, there is uncertainty as to the level of flexibility an employer has to reduce benefits for current employees.

Primary Cost Pressures: Health Premiums and Number of Retirees. As is the case with the state, public employers often make available to retired employees the same health plans that are available to active employees until the retiree is eligible for Medicare. As such, the fact that health premiums have grown at a rate faster than inflation also has been a major cost driver for retiree health benefits. In addition, the number of people in retirement continues to grow each year as the Baby Boomer generation retires and people live longer.

PROPOSAL

Prohibits Public Employers in California From Bargaining With Employee Organizations. The measure would prohibit the state or any of its political subdivisions from establishing a contract with or otherwise collectively bargaining with a public employee organization. The measure would apply to all state and local government entities in California. Effectively, the measure prohibits state and local governments from using collective bargaining to establish public employees' compensation. The measure does not, however, prevent employees from organizing or joining unions or associations that represent employees during disciplinary hearings, engage in political speech, or otherwise advocate for employees.

Directs SPB to Establish State Employee Wages and Benefits. The measure would direct SPB to establish the wages and employee benefits, including retirement benefits, for all state employees in the civil service. The measure does not establish similar provisions for local government employees or state employees excluded from the civil service.

Allows for Establishment of Severance Payments to Employees Who Choose to Terminate Employment Following Enactment of Measure. The measure specifies that the Legislature or the legislative body employing a public employee may provide a severance payment, not to exceed 12 months of employee pay, to any public employee who desires to terminate their employment within 90 days of the enactment of the measure.

FISCAL EFFECTS

Severance Payments

One-Time Costs. The costs incurred by state and local governments to provide severance payments under the measure would depend on (1) if employers choose to adopt a severance program, (2) the structure of the severance payment program adopted by employers (for example, the types of employees who may participate in the program and the number of months of salary that employees may receive), (3) the number of employees who choose to terminate their employment and receive the payment and the subsequent effects those terminations have on workload management, and (4) the salary levels of the employees who choose to receive the payments. If, for example, public employers decided to offer severance payments to all employees, and 1 percent—about 16,000—of public employees terminated their employment and received a severance payment equaling 12 months of salary, the cost across state and local governments could exceed $1 billion. Many of the public sector workers who might choose to take a severance payment likely would be employees who currently are eligible for retirement. (CalPERs has experienced roughly 32,000 retirements—across the state and local government workforce—annually over the past three years.)

Potential Acceleration of Savings Associated With Turnover. Employees who choose to retire earlier than they otherwise planned in order to receive a severance payment could be replaced by more junior employees who would receive lower salaries and lower retirement benefits (for example, a lower pension benefit under PEPRA or lower retiree health benefits). Alternatively, to the extent that workload allows, employers could choose not to backfill these vacated positions. In both cases, the measure would result in savings that otherwise would have occurred over time from natural turnover to instead occur sooner. The accelerated savings would be offset to the extent that the increase in the number of retired public employees also accelerates employer retirement costs—like higher pay-as-you-go retiree health costs and payments towards pension unfunded liabilities representing a higher percentage of pay. Unless public employers chose to reduce positions, there likely would not be significant long-term effects of these departures on public employer costs.

Elimination of Collective Bargaining

One-Time Administrative Costs or Savings to Transition to New Process to Establish Public Employee Compensation. Public employee compensation has been established through the collective bargaining process for many decades. If the measure were approved, whatever process were to replace collective bargaining would be significantly different from the current process and would require changes to government operations. These changes likely would require a shift in the number and types of staff employed by governmental employers. In the case of the state, a significant number of staff might shift from CalHR to SPB so that SPB could determine compensation levels for employees. In addition, the CalHR positions and departmental positions currently involved in the collective bargaining process and labor relations (for example, labor relations officers or bargaining negotiators) likely would become different types of positions (for example, compensation analysts). On net, depending on decisions by employers, the new system could be more or less expensive to administer than collective bargaining.

Ongoing Fiscal Effect Depends on Future Policies Adopted by Policy Makers. Ending public sector collective bargaining in and of itself does not result in changes in compensation. Any change in compensation relative to what currently is established by labor agreements would require action by state and local policy makers. As we discuss in greater detail below, policy makers' ability to affect compensation is constrained, which limits the potential fiscal effect of the measure, especially in the short term.

Measure Not Likely to Lead to Large Reductions in Government Workforce. Most public employees are not at will employees, but rather have permanent status. As such, we would not expect a large reduction in the number of people who work for government in California unless (1) governments were to reduce or change significantly the services provided to the public or (2) revenues declined sharply. In either case, we would not attribute the resulting savings as an effect of this measure.

Holding Non-Salary Elements of Compensation Constant, Average Salary Likely Would Keep Pace With Inflation. Assuming that non-salary elements of compensation are not changed, on average, governmental employers likely would decide to increase salaries regularly in order to maintain employees' purchasing power roughly in line with inflation in the broader economy. Since 1982-83, under collective bargaining, average state employee salaries increased slightly higher than the rate of inflation.

Compensation Could Be Higher for Some Employees and Lower for Others in the Future. While we would expect overall salary costs to keep pace with inflation, the compensation for some specific classifications likely would either increase faster or slower than inflation, depending on the labor market. There is evidence that some public employees are compensated at levels that are below compensation provided to comparable workers in the private sector. For example, CalHR's compensation studies have found that some state classifications (for example, attorneys, certain scientist classifications, and stationary engineers) earn total compensation that is lower than their private sector counterparts. To the extent that employers adopt a system that tries to maintain parity in compensation between similar public sector classifications and private sector jobs, public employers might increase the compensation for these types of positions, which tend to be higher-wage positions. There also is evidence that some public employees are compensated at levels that are higher than the compensation provided to comparable workers in the private sector. For example, CalHR's compensation studies have found some state classifications (for example, landscaping workers, custodians, and cooks) receive compensation that is higher than private sector counterparts. For these positions, which tend to be lower-wage positions, public employers might provide smaller annual increases to allow private sector compensation to catch up.

Parameters Used by SPB to Establish Compensation Not Defined. The measure does not provide guidance to SPB in terms of how it should go about determining state employee compensation levels. As such, the Legislature might need to adopt a statutory framework that establishes the actual process and criteria used by SPB to establish compensation levels. On the whole, what effect this provision of the measure would have on state costs is unknown.

Measure Does Not Affect Employers' Authority to Change Pension Benefits. The measure would not alter existing limitations on employers' ability to reduce pension or other retirement benefits for current employees that are considered protected contractual obligations under the California Rule. If the measure were enacted, employers likely would not be able to significantly reduce their costs related to the pension benefits or other contractually obligated retirement benefits for current employees. Existing law allows employers to reduce or even eliminate pension benefits for future employees. While the measure does not directly affect an employer's ability to modify future employees' retirement benefits, the measure could make it easier for some employers to adopt such changes in the future. Any action by a governmental employer to reduce these benefits for future employees would lead to significant savings for that employer; however, these savings would not materialize for decades until the workforce has turned over and could affect public employers' ability to recruit and retain staff.

SPB Authority to Set State Employee Compensation

New SPB Authority Likely Does Not Limit Existing Budgetary Authority of Legislature or Governor. Under the measure, SPB would "establish" compensation levels for civil service employees. While the measure is silent as to how this provision interacts with the Legislature's appropriation authority or the Governor's authority to veto appropriation items in the budget, courts likely would interpret compensation levels established by SPB as being advisory to the Legislature. That is, the Legislature could set compensation at levels higher or lower than those recommended by SPB. Moreover, SPB likely would not be able to change components of compensation like pension or retiree health benefits independently, which are governed by statute.

Summary of Fiscal Impacts. We estimate that the measure would have the following fiscal effects:

- One-time costs, potentially in the range of hundreds of millions to low billions of dollars, across state and local governments.
- Long-term fiscal effect depends on future actions by state and local policy makers.

Sincerely,

for Gabriel Petek
Legislative Analyst

for Keely Martin Bosler
Director of Finance