

ASSEMBLY THIRD READING
AB 1439 (Garcia)
As Amended January 22, 2026
Majority vote

SUMMARY

Requires the California Public Employees' Retirement System (CalPERS) Board of Administration and the Teachers' Retirement Board of the State Teachers' Retirement System (CalSTRS), respectively, to contract with the University of California (UC) Labor Centers to conduct an independent study to determine the impacts on public employee retirement funds of prohibiting the boards from investing in California development projects that do not provide labor standards protections for workers, among other provisions.

Major Provisions

- 1) Require the study and report of findings to be completed and submitted to the Legislature and the Department of Finance by January 1, 2028, and authorize the UC to subcontract with additional entities to perform individual components of the study if additional expertise is needed.
- 2) Define the following terms:
 - a) "Board" to mean the CalPERS and CalSTRS boards, as provided.
 - b) "Labor standards protections" to mean those that are consistent with the Labor Code and Public Contract Code, as respectively provided, and the developer has provided commitments to provide labor peace during union organizing campaigns for workers who will be employed upon completion of the project.
- 3) Establish codified legislative findings and intent expressing that the development of projects in California that do not involve strong labor standards protections for workers is not in the public interest or the interests of the participants in and beneficiaries of public pension and retirement systems.

COMMENTS

A Brief History Regarding Proposition 162 – "The Pension Protection Act of 1992" (General Election, November 1992), and the California Constitution

Among other things, Section 17, art. XVI of the California Constitution (Cal. Const.) establishes, among other things, sole and exclusive authority to pension system boards over the investments and administration of the system, and mandates fiduciary standards in the exercise of their duties. While doing so, it also simultaneously reserves to the Legislature, authority to prohibit investments by statute, subject to the standards of fiduciary care, loyalty, and diversification of investments required of a retirement board.

Upon review of the "Findings and Declarations" of Proposition 162, it is clearly evidenced that what serves as its foundational impetus results from the Legislature and Governor "raiding" pension fund public employee monies to address a budgetary shortfall in the state budget in 1991. Its "Findings and Declarations" state, among other things, that "[political] meddling has

driven the federal Social Security system to the brink of bankruptcy. To protect the financial security of retired Californians, politicians must be prevented from meddling in or looting pension funds." Further, "... to protect pension systems, retirement board trustees must be free from political meddling and intimidation." And, "[in] order to protect pension benefits and to avoid the prospect of higher taxes, the People must act now to shield the pension funds of this state from abuse, plunder, and political corruption."

Following voter adoption of Proposition 162 that amended the Cal. Const., public employee retirement systems in California operate as legal "trusts" for public employees who are members of such systems, and in which their assets are "trust funds" – not public funds – that must strictly be used to provide retirement benefits for system members, and the decisions of pension fund boards must solely be based on administering the funds in a manner that exclusively benefits its members and their beneficiaries. As stated, the purpose of that measure and its enshrinement in the constitution is to preclude political "meddling" or "interference" through external influence by the Legislature, Governor, and others over pension system board decisions regarding administration of those systems, investment of public employee monies for retirement purposes and accessing pension system monies for other purposes.

The fiduciary duties established and imposed upon pension system boards by Proposition 162 are well-established, long-standing, and consistent with historical jurisprudence and judicial decisions regarding such duties and trusts. As such, neither the Governor, the Legislature, the public, nor anyone else is burdened by the performance of, and adherence to, such legal duties and standards strictly owed to pension system members and their beneficiaries. Although the Legislature serves as a fiduciary with respect to the general safety, health, and welfare of the State and its public, it does not "stand in the shoes" of, or as, a fiduciary board member of a public employee pension system.

Although the Legislature has limited constitutional authority regarding pension system investments, its authority is deferential to pension system boards' plenary authority and fiduciary duties exclusively owed to their members. This goes to follow that should a breach of fiduciary duty occur, legal liability attaches to, and is shouldered by, pension system board members – not the Governor, Legislature, or public.

Labor Standards Provisions Currently Exist in CalPERS' and CalSTRS' Respective Responsible Contractor Policies

Since the 1990s, CalPERS' Responsible Contractor Policy (RCP) has supported fair market wages in addition to benefits and training based on local conditions for workers employed by contractors and subcontractors, subject to fiduciary principles that require competitive returns on its real estate and infrastructure investments. CalPERS' RCP demonstrates its support of human capital management by promoting the use of responsible contractors who offer fair wages and benefits, where it believes that an adequately compensated and trained worker delivers a higher quality product and service. Further, its RCP contains principles that 1) apply to contracts over \$100,000 for real estate and infrastructure investments in which it owns more than 50 percent; 2) establishes a duty of loyalty and prudence for CalPERS and its managers; 3) establishes a competitive bidding requirement for RCP managers; 4) requires observance of state, local, and national laws; and, 5) establishes delegation requirements for RCP managers.

Inclusive of this policy, managers must notify a national contact at trade/service unions, if the manager is expanding RCP investments into new areas so that trade/service unions can provide

the manager contact information of local trade councils and union halls in the market where expansion is occurring. As to "fair wage," "fair benefits," and "training," CalPERS' RCP specifically avoids a narrow definition of these terms stating that doing so might not be practical in all markets, and does not require a "prevailing wage," as defined by government surveys, because the policy looks to local practices concerning type of trade and type of project recognizing that practices and labor market conditions vary across the country where flexibility in its implementation is important. The policy includes provisions for transition, monitoring, and enforcement.

While looking to local practices, in lieu of a "prevailing wage" standard, CalPERS' RCP requires a broad outreach and competitive bidding program premised on the availability of a list of responsible contractors in every market where CalPERS directly owns a property. CalPERS does not depend solely on managers and delegates for gathering and analyzing information to identify and hire responsible contractors, and invites various local trades to suggest contractors that, in their own view, qualify as responsible contractors, from which the sources of this information include local building and service trade councils, builders, associations, and governments. It is noted that this policy and its considerations, according to CalPERS, are consistent with its investment beliefs that, necessarily, are subject to fiduciary principles and where its RCP is applied without significant adverse effect on investment returns, access to investment opportunities, or cost impacts.

Simultaneously, CalSTRS' RCP expressly "... supports and encourages fair wages and fair benefits for workers employed by its contractors and subcontractors, subject to fiduciary principles concerning duties of loyalty and prudence...," which require competitive returns on its investments.

CalSTRS' RCP defines a "responsible contractor" as contractor or subcontractor who pays workers a "fair wage" and "fair benefit" as evidenced by payroll and employee records. Such pay and benefits include employer-paid family health care coverage, pension benefits, and apprenticeship programs. Like CalPERS' RCP, "fair wage" and "fair benefit" depends on the wages and benefits paid on comparable investment projects based on local market factors (e.g., nature of project, i.e., residential, commercial, public, or private), comparable job or trade classification, and scope and complexity of the services provided. Additionally, and also like CalPERS, CalSTRS' RCP makes clear that contractors and subcontractors must abide by local, state, and national laws, and trade or service unions: i) must be asked to deliver a list of names and phone numbers of responsible contractors for delivery to a property manager; ii) refer interested and qualified responsible contractors to the property manager; and, iii) provide technical input as appropriate.

CalSTRS' RCP further details that its RCP also avoids a narrow definition of "fair wage," fair benefits," and "training" where such narrow definitions might not be practical in all markets. It further does not require "prevailing wage," as defined by government surveys. Rather, as a matter of practicality and prudence, instead, it looks to local practices recognizing that local practices and labor market conditions vary across the country. Such implementational flexibility is important towards achieving positive investment returns towards the board fulfilling its mandated constitutional fiduciary duty that is owed exclusively to its members.

CalPERS Has Taken Steps Necessary to Perform an Independent Study

Following efforts by the sponsor of this bill directed at the CalPERS Board to include similar labor standards provisions in its RCP, in June 2025, the CalPERS Board adopted the performance of a market study regarding the financial impact of prevailing wage and labor peace agreements for its real estate and infrastructure investments. The purpose of the market study is to "investigate how mandating prevailing wage requirements and labor peace agreements would affect the financial performance of real estate and infrastructure investments..., and "...will address the financial impact of these labor practices, analyze their influence on projected costs, timeliness, risk, and ultimately, investment returns." This fiduciary due diligence task is to assist the Board with determining whether it is prudent to mandate one or both labor practices into its RCP. What this bill proposes is, among other things, similar to the effort that the CalPERS board is currently performing, consistent with fiduciary due diligence, prior to an administrative action, if any.

To the extent that CalPERS independently moves forward with procuring the expertise necessary to perform the same or similar study required by this bill, this potentially duplicative approach may result in challenges relating to the awarding/letting of a contract. In sum, a Request for Proposals by CalPERS to perform an independent study could result in a contract that is not awarded/let to the UC Labor Centers; whereas, this bill requires contracting with the UC Labor Centers.

Other Constitutional Considerations

Among other things, the Cal. Const., *ibid.*, requires public employee retirement system boards to "... [defray] reasonable expenses of administering the system."

To the extent that this bill requires CalPERS and CalSTRS, respectively, to expend funds to procure the performance of the proposed statutorily mandated study by the UC Labor Centers that, in turn, may subcontract with another for a currently unknown or undetermined amount and where such costs either might not be accounted for or controlled by the boards, this raises questions regarding adherence to the constitutional requirement to "...defray 'reasonable' expenses...." This specific issue could be applicable if the UC Labor Centers would need to subcontract and reimbursement of subcontract costs must be paid by the systems/boards.

Please see the policy committee analysis for a full discussion of the prior version of this bill.

This Bill

Because of the complexities involving the subject of this bill and the paramount importance and need for public employee retirement board fiduciary due diligence, the study by CalPERS and CalSTRS will take time for completion and must not be expedited or prejudged to a certain outcome or determination. In addition, because this bill mandates an "independent" study, that independence must not be interfered with to achieve a particular objective.

While the study is intended to provide insight as to whether the twain shall (or can) meet, the constitutional duties and authorities of retirement system boards regarding their investments in trust assets remain plenary.

According to the Author

"[The recently approved CalPERS] RCP has no real teeth to guarantee that prevailing wages are paid, that construction workers are properly trained, or that there is labor peace after

construction. This allows CalPERS to actively invest in projects that allow worker exploitation and undermine the standards that labor have fought so hard to establish. [This bill] ensures contractors doing work on CalPERS-funded projects not only are good stewards of public employee members' investments but that they treat workers on CalPERS projects with dignity."

Arguments in Support

Among other things, generally, the sponsor and supporters of this bill express that CalPERS' RCP is insufficient to ensure that well-trained and skilled workers are employed by contractors on CalPERS-invested development projects. They content that his bill will help to ensure against low-road jobs and employer violations towards treating workers on such projects with dignity while also being in the interests of public health and safety.

Arguments in Opposition

None on file that address the current version of the bill.

FISCAL COMMENTS

According to the Assembly Appropriations Committee, this bill would result in one-time General Fund costs of a significant amount, likely in the low hundreds of thousands of dollars, for the boards of CalPERS and CalSTRS to contract with the UC Labor Centers to conduct the study determining the impacts of a labor standards protections investment restriction.

VOTES

ASM PUBLIC EMPLOYMENT AND RETIREMENT: 5-0-2

YES: Alanis, Boerner, Elhawary, Garcia, Chen

ABS, ABST OR NV: McKinnor, Nguyen

ASM APPROPRIATIONS: 10-4-1

YES: Wicks, Stefani, Calderon, Caloza, Fong, Mark González, Krell, Bauer-Kahan, Pellerin, Solache

NO: Hoover, Dixon, Ta, Tangipa

ABS, ABST OR NV: Pacheco

UPDATED

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