

CAPSule

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November 2013, Issue #13-11

Wheels Coming Off Reed's Pension Scheme



San Jose Mayor Chuck Reed's measure to slash the retirement benefits of current California public employees has lost the support of a key Democratic mayor and is experiencing other major setbacks even before it has received title and summary from the California Attorney General.

On November 12, Reed pulled his original version of the ballot measure. He submitted a new version of the initiative with what he calls "substantive" changes in the filing. Santa Ana Mayor Miguel Pulido no longer is listed as a proponent, replaced by a city council member from Vallejo on the filing. Pulido was one of the four Democratic mayors that Reed announced when he introduced the measure. No other mayors — Democratic or Republican — have since endorsed Reed's effort. The mayors of California's largest cities also are conspicuously absent from the measure.

Meanwhile, in a related development, Mercury Public Affairs, a major public affairs firm in Sacramento, which had been handling the rollout of the ballot measure, is no longer working on it.

"It is clear that the wheels are coming off the wagon of Mayor Reed's pension scheme," said Dave Low, Chairman of Californians for Retirement Security, a 1.6 million member group representing public employees and retirees. "Even though Reed made cosmetic changes to it, the measure's weaknesses — breaking the promise of retirement security to current public employees, increased short-term costs to state and local governments, and legal issues— remain the same. These are flaws that even the millions of dollars of dark money from out-of-state that Chuck Reed is counting on can't fix."

Low noted that Mayor Reed is relying on "dark money" from right-wing funders to promote this effort. Reed recently told a San Jose news outlet that "I'm not going to tell you" who is contributing to his effort. However, local news media have reported that a \$200,000 contribution has been received to promote Reed's efforts from a foundation run by Texas-based Enron billionaire John Arnold.

"Less than a year ago, we overwhelmingly defeated Prop 32 with strategic organizing of our supporters," he said. "With the introduction of his measure, Mayor Reed has given our effort to galvanize these voters a kick start. We will muster all the resources we have to defeat this measure if the Mayor continues to move forward with it instead of engaging in constructive dialogue and settling these issues at the bargaining table instead of the ballot box."

Your Vested Right to Retirement



Some time ago, CalPERS produced a legal analysis of pension promises made to current and retired CalPERS members that are a "vested right" and protected under State and federal laws. That CalPERS analysis looked at more than a dozen California appellate cases over the last 70 years, noting several legal precedents that emerged from those rulings:

- Public employees obtain a vested right to the provisions of the retirement law that exists during the course of their public employment. Thus, CalPERS members — that includes all state scientists — enjoy a vested "property" right to the benefits promised to them under the law for their future retirement years.
- Retired and inactive members have vested rights to the benefits promised to them when they worked.
- Employees are entitled only to amounts reasonably expected. Vested rights protection does not extend to unreasonable or unanticipated windfalls.
- The state's "emergency" powers are extremely limited and cannot be used to reduce the benefits that have been promised. The state's emergency powers do not enable it to solve its budgetary problems by eliminating or reducing the long-term benefit promises it has made.
- Future employees have no vested rights.
- Only lawful contracts with mutual consideration are protected by the contract clause.

Active employees' vested rights may be unilaterally modified only under extremely limited circumstances. Modifications must be reasonable and must bear some material relation to the theory of a pension system and its successful operation. Changes that result in disadvantage to employees generally must be accompanied by comparable new advantages. If a pension reform proposal for current employees were to be enacted—such as the "reform" proposal recently introduced as a ballot measure by San Jose Mayor Chuck Reed — it would still have to "pass muster" under the Contract Clause of the California Constitution. If a proposed amendment eliminated the State Constitution's Contract Clause, the Contract Clause in the U.S. Constitution would still give rise to the same protection of vested rights as the State Constitution.

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LPLW Top Priority for 2014

The 2013 – 2015 CAPS Board of Directors was formally seated on Saturday, November 2 in Sacramento and immediately got down to business.

The Board adopted a legislative program for 2014 to include the following goals and objectives:

- Pursue funding for the Like Pay/Like Work decision in the state budget;
- Continue to support measures to address climate change;
- Protect California's natural resources from negative effects of marijuana cultivation;
- Address supervisor/manager salary compaction (SB 216);
- Recognize State Scientist Day in a legislative resolution;
- Approve a bill ratifying CAPS' MOU when one is negotiated;
- Ensure adequate fees to support departments employing state scientists.

CAPS members were approved as CAPS Local Reps: Jared Weathers of CalRecycle, Itzia Rivera of the Department of Water Resources, and Marc Epstein of Food and Agriculture.

CAPS will cosponsor the 2014 Synopsys Sacramento Regional Science & Engineering Fair scheduled for March 21 and 22 in Sacramento.

The CAPS Bargaining Team was authorized to expend up to \$50,000 from the CAPS reserve on a media campaign in support of a positive outcome in collective bargaining upon approval by the CAPS Executive Committee.

A restructured CAPS Bargaining Team was approved, consisting of Patty Velez (Chairperson- DFW Monterey), David Miller (DTSC Sacramento), Margarita Gordus (DFW Fresno), Ryanne Mason (Cdfa Sacramento), and Stormer Feiler (Water Board Santa Rosa).

The next meeting of the CAPS Board of Directors will be held at the Sacramento Downtown Plaza Holiday Inn on Saturday, February 8 beginning at 9 AM. All members are welcome. Meeting dates and locations are always posted on the CAPS webpage: www.capsscientists.org.



State Scientist Day 2014: May 14 Is YOUR Department Participating?

CAPS has sponsored State Scientist Day on the West Steps of the State Capitol for the last 25 years. This year is no different, with booths and hands-on demonstrations from dozens of state departments. A strong supporting cast of state scientists get elementary school kids REALLY excited about science with kid-friendly interactive displays showcasing the essential work of state scientists. Crowding the Capitol grounds are thousands of students from grade schools near and far. Activities are geared toward third to sixth grade students. In 2014, CAPS will actually be limiting the number of kids who attend. The crowd has grown too large for the event to accommodate.

We need MORE state departments to participate. Is YOUR department ready to sponsor and staff its own kid-friendly display? Can YOU help pull this together? If you're thinking about it, we can help with project ideas, power needs, and logistical support.

CAPS coordinates the event, and typically brings many state lawmakers and other public officials to participate. So it's not only good for kids, it's a GREAT way to promote state science programs with state decision makers. Thanks to the many departments which year after year have supported State Scientist Day with time and materials from their scientific staff. Thanks to the departments that have made this event a success in the past.

These have included the Departments of Fish and Wildlife, Toxics, Public Health, Conservation, Fire, Pesticide Regulation, Food and Agriculture, Parks, CalRecycle, Energy Commission, Lands Commission, Air Board, Water Board, Water Resources, Coastal Commission, CalEMA, and OEHHA. Many departments present more than one exhibit or activity.

For more details, please contact Bianca Gutierrez at 916-441-2629 or email her at ssd@capsscientists.org to discuss your ideas and how the important work you perform can be showcased at State Scientist Day.

26th Annual
state scientist day 
May 14, 2014

Protecting Pensions

By David Miller, President

According to a recent editorial in the *Riverside Press Enterprise*: "Taxpayers have no desire to let untouchable pensions crowd out public services. Legislators — or voters — need to give local governments the flexibility to adjust current workers' retirement payouts. Otherwise, cities and counties will face relentlessly rising costs that threaten to undermine crucial local responsibilities."

This appears to be an early endorsement of San Jose Mayor Chuck Reed's "Pension Reform" initiative. Reed's measure would, among other things, allow state and local governments to reduce retirement benefits for current employees for the years of service they perform **after** the measure goes into effect, and that could be as soon as November 2014!

Sadly, the editorial slant is the same with far too many California newspapers. This anti-public employee bias could be due in large part to envy; far too many California-based newspaper employees rely on their own meager 401(k) style retirement plan to carry them through their golden years.

Fortunately, the public generally does not share these views. A recent national study found that 42 percent of Americans say that saving money for retirement and paying their bills is not possible; 37 percent say they will never be able to afford to retire, continuing to work until they are sick or die. A proposed pension reform ballot measure that would have closed off Cincinnati's current system to new employees and reduced benefits for current employees met a resounding defeat on November 5. Residents there voted four to one against the ballot measure.

Mayor Reed recently attracted additional publicity by "inviting" labor groups to explore solutions to the underfunding problem. In a written response signed by CAPS and many other labor groups, Mayor Reed was told that if he wanted serious dialogue, he should have sought it **before** submitting final language to the Attorney General for title and summary.

We also questioned Reed's sincerity. He continues to misrepresent the measure, which allows employers to unilaterally end collective bargaining over proposed changes after 180 days. Reed has attended numerous forums where unions were denied the opportunity to participate, including the recent "dialogue" on pensions at the ultra-conservative Hoover Institution at Stanford University. He has traveled extensively to shop his measure to extremist organizations nationwide.

The 2013 Public Employees Pension Reform Act (PEPRA), signed by Governor Brown, already reduced the pension formula for public employees, saving the state more than

\$100 billion. Yet Reed insists on eliminating the rights of public employees and their unions to negotiate further changes.

Reed ignores the fact that more than 500 other elected leaders in the state have settled their differences on pensions at the bargaining table.

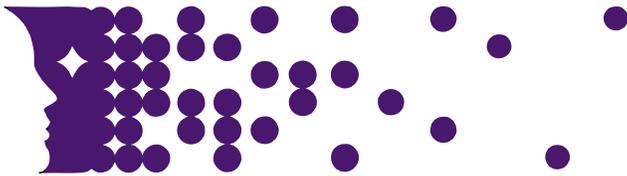
Recent polling indicates that 63 percent of Californians oppose unilateral cuts in the benefits of current public employees — the heart of Reed's proposal. Only 30 percent of the state's voters support pension issues being dealt with at the ballot box.

The "dark money" behind Reed's efforts calls his motives into question. According to news reports, Reed has accepted more than \$200,000 from an out-of-state foundation funded by a Texas billionaire who made his fortune at Enron ripping off Californians through the energy crisis and John Arnold walked away from bankruptcy with a golden parachute, while other Enron workers lost their life savings.

Reed's time — and that of his billionaire backers — would be better spent working to extend retirement options to Californians who need it, not hastening the race to the bottom through attacks on what little retirement security remains in this economy.

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In This Issue

- » *Wheels Coming Off Reed's Pension Scheme*
- » *Your Vested Right to Retirement*
- » *Science Fair Judges Needed*
- » *LPLW Top Priority for 2014*
- » *Protecting Pensions, by David Miller, President*

Science Fair Judges Needed

CAPS needs additional judges for regional science fairs to be held throughout the state next spring, and YOU CAN HELP! Most Fairs need a team of five or six CAPS members to judge projects. It's fun and easy – a great way to spend some free time encouraging young people in the pursuit of independent learning. CAPS members judge student projects at the fairs and select a winner to receive a special award and a check for \$100. Volunteer judges have the option of evaluating each individual entry, or taking the more time efficient method of evaluating projects already selected as category winners by the Fair's judging process.



Each regional winner is then eligible to compete for the CAPS Outstanding Young Scientist Award. Three finalists attend a luncheon in Sacramento during the Fall with CAPS leaders and other dignitaries where they explain their projects and receive additional prizes.

Dates and locations of upcoming fairs can be found on the CAPS webpage: www.capsscientists.org. If you can help, please contact Bianca Gutierrez, bgutierrez@capsscientists.org, or 916-441-2629.