

RESOLUTION  
RECOMMENDING USE  
OF P.E.R.S.  
RESERVES FOR  
MORTGAGES

RES. NO. 81-94

Council was apprised that approximately three months ago, Mayor Pat D. Maisetti of Patterson, at a conference of the Central Valley Division League of California Cities seminar at Twain Harte, asked Councilman James Pinkerton to work on a resolution to be presented to that Committee for their approval and subsequent thereto upon approval, to be presented to the League of California Cities at its fall meeting. The subject of said resolution is the possible freeing-up of the Public Employees' Retirement System funds for investments in residential real estate.

Council was further apprised that at present, there are two Bills in the Senate regarding the investment of public pensions into other than sources where it presently has invested monies, including the investment in real estate (SB 211 - Keene and Senate Constitutional Amendment 21 - Keene). A brief report concerning SB 211, SCA 21 and AB 2167 were provided for Council's information.

Following Council discussion, on motion of Councilman Katnich, Murphy second, Council adopted Resolution No. 81-94 - "Resolution Recommending Use of P.E.R.S. Reserves for Mortgages".

# COUNCIL COMMUNICATION

TO: THE CITY COUNCIL

DATE

NO.

FROM: THE CITY MANAGER'S OFFICE

JULY 10, 1981

SUBJECT:

RESOLUTION RECOMMENDING USE OF PERS RESERVES FOR MORTGAGE-BACKED INVESTMENTS

Approximately 3 months ago, Mayor Pat D. Maisetti of Patterson, at a conference of the Central Valley Division League of California Cities seminar at Twain Harte, asked Councilman James Pinkerton to work on a resolution to be presented to that Committee for their approval and subsequent thereto upon approval, to be presented to the League of California Cities at its Fall meeting. The subject of said resolution is the possible freeing-up of the Public Employees' Retirement System funds for investments in residential real estate. Attached hereto is a copy of the League Employee Relations Committee Report regarding PERS investments. You will note that at the present time, the net earnings of PERS investments is 7.91%. This amount of interest, when compared with the investments of many cities of their investments, is substantially low. It was with this in mind and because of the shortage of housing in this State, that Mayor Maisetti asked Councilman Pinkerton to look into the possibility of opening up the area of investments of PERS funds into higher yielding investments, and specifically real estate investment.

What is important to note at the very outset is that the investments would not be specifically in mortgages per se, but would be an investment in savings and loan institutions, and the savings and loan institutions would originate and service the investments.

For your consideration and review, there is also information within the above-referenced Committee Report which sets out the background regarding the present public pension system's investment limitations.

At present, there are two Bills in the Senate regarding the investment of public pensions into other than sources where it presently has invested monies, including the investment in real estate. Senate Bill 211 (Keene) and Senate Constitutional Amendment 21 (Keene) are the two Bills to which I am referring. Copies of said Bills are attached hereto for your review and consideration.

At present, SCA 21 has failed in Committee but has been granted reconsideration and will be reconsidered in August. SCA 21, since it is a Constitutional amendment, would require an election by the people.

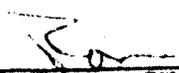
SB 211 would permit the investments of monies in retirement funds into residential real estate in the State. You will note the

language in SB 211 to the effect that this is not mandatory, but rather somewhat of a suggestion, therefore, the fund managers would still have to be convinced to make these types of investments.

In speaking with Ann Bailey of Senator Keene's office, I was informed that if SCA 21 is defeated, that SB 211 will not go into effect because SCA 21 appears to be the general enabling act while SB 211 is the specific enabling act, and to invest in real estate, it would require the passage of SCA 21, a vote of the people, and passage of SB 211.

As a further note, I am attaching a copy of Assembly Bill 2167 which is authored by Assemblyman Costa which would permit the use of retirement funds in the Carpenters' Union to be used for shared appreciation loans. At present, this Bill is in the Banking and Commerce Committee and will be heard in the Fall.

I have been in contact with Dwight Stenbakken of the League of California Cities regarding the resolution and he will be keeping me apprised of the progress of SB 211, SCA 21 and AB 2167. The League's position on our resolution as it is presently worded is that as long as there is no intent to direct or suggest that the pension funds be used for low or moderate income housing, that the League could support the resolution.

  
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RONALD M. STEIN  
CITY ATTORNEY

RMS:vc

attachments - Committee Report  
SB 211  
SCA 21  
AB 2167

## COMMITTEE ON EMPLOYEE RELATIONS

## PERS INVESTMENTS--INFORMATION ITEM

April 1981

At the last meeting of the Board it was recommended that the League Employee Relations Committee begin an examination of the investment policies of the Public Employees' Retirement System (PERS). The net interest earnings of PERS for the fiscal year ending June 30, 1981 was 7.91% on investments while employee and employer accounts were credited with 6.75% of those net interest earnings. This amount of interest earnings when compared with the earnings of many cities on the investment of local funds is significantly low. The implications of this problem for public employers is obvious. The greater the amount of interest earnings the lower the employer contribution rate into the system. The current interest earning rate of PERS is doing little to defer our obligations.

A number of cities in the Peninsula Division of the League have started a systematic examination of this issue and made a number of suggestions to PERS on possible strategies to increase interest earnings. These suggestions have been made at a special meeting scheduled with the PERS investment staff as well as the PERS Board meeting held on April 22 in Los Angeles.

The League testified at the same April Board meeting of PERS and has suggested the following:

1. The assumptions behind the PERS investment strategy on long-term investments be examined carefully with particular attention to increasing PERS revenues going into short-term investments. This should be thoroughly explored as a possible means to increase the total investment return.
2. The League will fully support the investigation of PERS investment policies in the Assembly under the direction of Assemblyman Lou Papan. One of the specific suggestions of this Committee should be the examination of the assumptions behind the PERS investment strategies. Particular attention should be directed at the economic predictions and their implications for the investment of PERS revenues in short and long-term investments.
3. The League would support legislation which would give PERS more flexibility to invest funds in areas where they are now limited and where greater returns on investments can be achieved.
4. There should be an increase in local government management representatives on the PERS Investment Committee. With the growth in the percentage of local government monies going to PERS there should be greater opportunity for local government input on the investment strategies of the fund.
5. Local government representation on the PERS Board should also be increased to more accurately reflect the greater percentage of local government assets in the system.
6. The League and California Taxpayers' Association will sponsor legislation to discourage the use of the contingency reserve account of the PERS fund. This will also require the Board of PERS to credit more of the interest earnings back to employer and employee accounts, thus deferring some of the employer obligations to the system.

. . . OVER

The Employee Relations Committee intends to be actively involved in this issue as it progresses through the Legislature. The positions taken by the League on investment issues will be directed at the goal of maximizing the investment return of the system which in turn will assist in offsetting employer obligations to PERS. The Committee will report back to the Board as the issue progresses.

AMENDED IN SENATE MARCH 23, 1981

SENATE BILL

No. 211

Introduced by Senator Keene

February 3, 1981

An act to add Section 7509 Sections 22225 and 22225.5 to the Education Code, and to add Sections 7509, 20205.6, 20205.8, 31595.7, and 31595.8 to the Government Code, relating to public pension and retirement plans, and making an appropriation therefor.

LEGISLATIVE COUNSEL'S DIGEST

SB 211, as amended, Keene. Public pension and retirement systems: investments.

(1) Existing law prescribes the permissible investments of the Public Employees' Retirement Fund, the Teachers' Retirement Fund, and the funds of systems established under the County Employees Retirement Law of 1937.

This bill would authorize those funds to be invested in securities issued by corporations and limited partnerships in this state, the majority of whose assets are in nonpublicly traded stocks and would establish the State Securities Advisory Committee to review those investments for the State Teachers' Retirement System and the Public Employees' Retirement System.

(2) The Public Employees' Retirement Law, the State Teachers' Retirement Law, and the County Employees Retirement Law of 1937 presently provide that the systems established under those laws are trusts and contain provisions regarding the fiduciary duties of the board members and their officers and employees.

This bill would, in addition, prescribe additional fiduciary standards and prohibitions.

(3) Existing law prescribes permissible investments of

retirement fund moneys of public pension and retirement systems and some systems have only limited authority to invest in residential real estate.

This bill would, notwithstanding any other provision of law, permit all state and local public retirement systems to invest in residential real estate in this state without restriction and authorize their governing boards to enter into agreements with private lending institutions and individuals to originate and service the investments.

*(4) Article XIII B of the California Constitution and Section 2231 of the Revenue and Taxation Code require the state to reimburse local agencies and school districts for certain costs mandated by the state. The statutory provision also specifies the manner for paying this reimbursement and requires any statute mandating these costs to contain an appropriation to pay for the costs in the initial fiscal year.*

*This bill would appropriate an unspecified sum to the Controller for allocation and disbursement in accordance with Section 2231 of the Revenue and Taxation Code to local agencies and school districts for costs mandated by the state and incurred by them pursuant to this act.*

Vote: majority  $\frac{2}{3}$ . Appropriation: no yes. Fiscal committee: yes. State-mandated local program: no yes.

AMENDED IN SENATE MAY 27, 1981

AMENDED IN SENATE MAY 5, 1981

Senate Constitutional Amendment

No. 21

Introduced by Senators Keene and Greene  
(Principal coauthors: Senators Speraw and Foran)  
(Coauthors: Assemblymen Bane and Floyd)

March 19, 1981

Senate Constitutional Amendment No. 21—A resolution to propose to the people of the State of California an amendment to the Constitution of the state, by amending Section 17 of Article XVI, relating to public pension and retirement systems.

LEGISLATIVE COUNSEL'S DIGEST

SCA 21, as amended, Keene. Public pension and retirement systems: funds.

The California Constitution presently permits the Legislature to authorize public pension and retirement funds to invest up to 25% of their assets in common stock or shares, and 5% of their assets in preferred stock or shares, of corporations which meet prescribed standards.

This measure would permit the Legislature to authorize public pension and retirement systems to instead invest up to 50% of their assets in common stock or shares and, *within the 50% limitation*, to also invest up to 5% of their assets in the common stock or shares of corporations which do not meet certain of the present standards, and would also permit the Legislature, *within the 50% limitation*, to authorize 1% of the funds to be invested in corporations and limited partnerships, the majority of whose assets are in nonpublicly traded equity instruments. The measure would also provide that the assets of public pension or retirement funds are trust

SCA 21

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funds and would prescribe fiduciary standards in respect to their investment.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

AMENDED IN ASSEMBLY MAY 27, 1981

AMENDED IN ASSEMBLY MAY 13, 1981

CALIFORNIA LEGISLATURE—1981-82 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2167**

Introduced by Assemblyman Costa

April 10, 1981

An act to add Chapter 4 (commencing with Section 1917.010) to Title 4 of Part 4 of Division 2 of the Civil Code, relating to shared appreciation loans, and declaring the urgency thereof, to take effect immediately.

**LEGISLATIVE COUNSEL'S DIGEST**

AB 2167, as amended, Costa. Shared appreciation loans.

Existing law contains no provisions directly relative to an alternative mortgage instrument by which a lower than prevailing market interest rate is given on a loan for the purchase of residential property in exchange for a share in the future appreciation of the property.

This bill would enact a comprehensive scheme for providing "shared appreciation loans" by persons acting on behalf of pension funds subject to the Employee Retirement Income Security Act of 1974. A shared appreciation loan would be for the purchase of real property at an interest rate  $\frac{1}{2}$  lower than the prevailing interest rate in return for contingent deferred interest in the amount of  $\frac{1}{2}$  of the appreciation, to be paid by the borrower upon sale, when title is transferred, except as otherwise specified, when a lease with an option to purchase is entered into, when a partnership is formed which transfers the beneficial interest to another person, when a trust is created which affects title to the property, upon a judicial or nonjudicial foreclosure sale, upon full prepayment of the loan, or upon the maturity date of the

loan, whichever first occurs. In the absence of any such event, the lender must provide refinancing of the balance of the loan and any contingent deferred interest, if the borrower so desires, for a period of at least 30 years.

The bill would exempt lenders making these shared appreciation loans from the usury provisions of the California Constitution.

The bill would take effect immediately as an urgency statute. *The provisions of the bill would become inoperative on January 1, 1990, except as to shared appreciation loans entered into prior to that date.*

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no. State-mandated local program: no.

DRAFT RESOLUTION

WHEREAS, Rapid escalation in housing costs, in association with unprecedented rises in mortgage interest rates have reduced housing opportunities within the State of California; and

WHEREAS, the present housing crisis threatens economic growth, job growth, prosperity and the quality of life in California; and

WHEREAS, these housing problems have been compounded by tremendous reductions in traditional sources of mortgage capital; and

WHEREAS, the flow of new capital into the housing market will make housing financing more available; and

WHEREAS, public and private pension funds make up the greatest capital resource in the State;

NOW, THEREFORE, BE IT RESOLVED by the League of California Cities as follows:

- 1) Action should be taken by the State Legislature which would facilitate the pension fund managers entering into agreements with savings and loan associations to originate and service mortgage-backed investments on behalf of the Public Employees Retirement System.
  
- 2) Pension fund managers should be strongly-encouraged to participate in mortgage-backed investments; and further, should be afforded maximum flexibility in their approach to and choice of investments, including the investment of pension funds in residential real estate.

RESOLUTION NO. 81-94

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LODI RECOMMENDING USE OF P.E.R.S. RESERVES FOR  
MORTGAGES

WHEREAS, rapid escalation in housing costs, in association with unprecedented rises in mortgage interest rates have reduced housing opportunities within the State of California; and

WHEREAS, the present housing crisis threatens economic growth, job growth, prosperity and the quality of life in California; and

WHEREAS, these housing problems have been compounded by tremendous reductions in traditional sources of mortgage capital; and

WHEREAS, the flow of new capital into the housing market will make housing financing more available; and

WHEREAS, public and private pension funds make up the greatest capital resource in the State;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Lodi as follows:

- 1) Action should be taken by the State Legislature which would facilitate the pension fund managers entering into agreements with savings and loan associations to originate and service mortgage-backed investments on behalf of the Public Employees Retirement System.
- 2) Pension fund managers should be strongly encouraged to participate in mortgage-backed investments; and further, should be afforded maximum flexibility in their approach to and choice of investments, including the investment of pension funds in residential real estate.

Dated: July 15, 1981

I hereby certify that Resolution No. 81-94 was passed and adopted by the City Council of the City of Lodi in a regular meeting held July 15, 1981 by the following vote:

Ayes: Councilmen - Murphy, Hughes, Pinkerton, Katnich and McCarty

Noes: Councilmen - None

Absent: Councilmen - None

*Alice M. Reimche*  
ALICE M. REIMCHE  
City Clerk