ATTACHMENT B

STAFF'S ARGUMENT
STAFF’S ARGUMENT TO ADOPT THE PROPOSED DECISION

Introduction

Shortly after the California Public Employees’ Pension Reform Act of 2013 (PEPRA) took effect, the United States Department of Labor (DOL) incorrectly determined that PEPRA impaired the rights of transit employees under federal law, and for that reason, refused to certify federal transit grants for various California transit agencies. In response, the California Legislature enacted Assembly Bill 1222 (AB 1222), an urgency amendment to PEPRA that temporarily exempted transit workers from PEPRA so that federal transit funds would continue to flow to California transit agencies while the State sued DOL in United States District Court to uphold PEPRA’s reforms. AB 1222 provided that PEPRA would be suspended as to transit workers “until a federal district court rules that [DOL] erred in determining” that PEPRA precludes certification, which it did on December 30, 2014.

After the federal District Court ruled in the State’s favor and thereby triggered the end of the exemption, CalPERS began applying PEPRA to the previously exempted transit workers. Respondents Santa Clara Valley Transportation Authority (Respondent VTA) and six transit employees1 (Individual Respondents) appealed, arguing that AB 1222 created a permanent exemption from PEPRA for transit workers who were hired before the date of the federal District Court decision.

The matter proceeded before an Administrative Law Judge (ALJ), who denied Respondents’ appeals. AB 1222, the ALJ held, created only a temporary exemption from PEPRA for certain transit workers, an exemption that ended when the federal District Court ruled that PEPRA did not impair the bargaining rights of transit employees. Staff agrees with the ALJ’s careful and well-reasoned Proposed Decision, and therefore recommends that the Board adopt it.

Factual and Procedural Background

A. The Legislature Enacts PEPRA to Create a “Less Expansive” Retirement Formula That Would Be “Less Burdensome” for State/Local Governments

Effective January 1, 2013, PEPRA substantially revised the laws governing “all state and local public retirement systems and their participating employers.” (Gov. Code section 7522.02(a)(1)).2 For public employees who became “new members” through new public employment on or after the law’s effective date, PEPRA established new retirement formulas and cost-sharing. (Sections 7522.02(b), 7522.02(f); 7522.20-

1 LaKeysha Dorsey, Jesse Gomes, Aaron Gwin, Lloyd Jackson II, Toni O’Connor and Buddy Roark, all “new member” BART employees. BART is also a named Respondent but did not file an appeal and did not appear at the hearing.

2 All subsequent statutory references are to the Government Code unless otherwise indicated.
7522.34.) Employees hired before PEPRA’s effective date receive higher benefit formulas with lower retirement ages, known as “classic benefits,” but are subject to various other PEPRA provisions.

B. DOL Refuses to Certify $1.6 Billion in Federal Transit Grants for California Transit Agencies

In September 2013, DOL advised California’s transit agencies that it had found that PEPRA impairs federal labor protections under Section 13(c) of the Urban Mass Transit Act (UMTA)\(^3\) for affected California transit employees, and that it would therefore not certify transit grants intended for California’s transit agencies, placing over $1 billion in federal transit funds at risk.

C. The Legislature Passes AB 1222 as Urgency Legislation, Creating a Temporary Exemption from PEPRA for Certain Transit Agency Employees While California Sues DOL in Federal Court

The same day as the DOL decision, Governor Brown announced AB 1222 as a remedial measure to “ensure that $1.6 billion in federal grants continue to flow to transit districts while [the State] pursues litigation to defend California’s bipartisan pension reforms.” AB 1222 “will temporarily exempt local agencies’ transit workers from PEPRA but preserves the [S]tate’s ability to fight for the pension reform law in court.” AB 1222 added paragraph (3) to section 7522.02, subdivision (a), as follows:

“(A) Notwithstanding paragraph (1), this article shall not apply to a public employee whose interests are protected under Section 5333(b) of Title 49 of the United States Code until a federal district court rules that the United States Secretary of Labor, or his or her designee, erred in determining that the application of this article precludes certification under that section, or until January 1, 2016\(^4\), whichever is sooner.

(B) If a federal district court upholds the determination of the United States Secretary of Labor, or his or her designee, that application of this article precludes him or her from providing a certification under Section 5333(b) of Title 49 of the United States Code, this article shall not apply to a public employee specified in subparagraph (A).”

AB 1222 took effect on October 4, 2013 as an urgency amendment “to preserve the funding for essential transportation infrastructure projects while balancing the public’s need to control the costs of public employee pension benefits.” Legislative Committee analyses showed the Legislature expected the bill would exempt transit workers “for a specified period of time,” considered workers to be “temporarily exempted,” and understood the length of the exemption to be “contingent on specified events.”

\(^3\) The UMTA is codified at 49 U.S.C. 5333(b).

\(^4\) AB 1783 amended AB 1222 to insert the alternative expiration date of January 1, 2016. Previously, AB 1222 used January 1, 2015 as the date.
California sued DOL in U.S. District Court, Eastern District of California, on the same day that AB 1222 took effect. The lawsuit, the Governor announced, served to “defend [California’s] landmark package of pension reforms.”

CalPERS then issued a Circular Letter to its participating employers explaining that AB 1222 “exempts California transit employees of public employers from all of the provisions of [PEPRA] until January 1, 2015,” or until a court determines that the provisions of PEPRA do not violate specified federal transit labor laws, “whichever is sooner.”

D. The Federal Court Rules in Favor of the State, Finding that DOL Erred in Refusing to Certify Transit Grants Because of PEPR

On December 30, 2014, the District Court granted summary judgment in favor of the State and against DOL. (California v. DOL (E.D. Cal. 2014) 76 F.Supp.3d 1125, 1143-1144.) By refusing to provide Section 13(c) certification because of PEPRA, the court ruled DOL “erred in its interpretation of the intersection between federal labor policy and a state’s system-wide changes in some aspects of public employment.” (Id.) The court also ruled that the DOL’s decision “essentially writes a substantive term into labor-management agreements, outside of DOL’s authority to do so” and “failed to consider the realities of public sector bargaining,” all of which rendered its refusal to provide Section 13(c) certification decision “arbitrary and capricious.” (Id.) The District Court held that “[i]n rejecting certification based on its evaluation of PEPRA’s impact on new employees, DOL misinterpreted the law and did not consider all relevant factors.” (Id. at p. 1145.) In sum, the federal court held that DOL did not articulate a legitimate or lawful basis for its decision to withhold certification. The court’s decision triggered the end of the temporary exemption.

Shortly after the December 2014 District Court decision, CalPERS advised employers that the AB 1222 exemption had expired. “New member” transit workers hired before the District Court decision would retain pre-PEPRA benefits for the period January 1, 2013 through December 29, 2014, but effective December 30, 2014, all “new member” transit workers—hired on or after January 1, 2013—would be returned to the PEPRA appointments in which they had started or in which they would have been placed but for AB 1222’s temporary exemption.

E. Respondents Appeal, Argue That AB 1222 Created a Permanent Exemption from PEPRA for Transit Employees

Respondents appealed CalPERS’ determination and exercised their right to a hearing before an ALJ, which took place on December 17 and 18, 2018. Respondents were represented by counsel at the hearing. Respondent Bay Area Regional Transit did not

---

5 See footnote 3, supra, explaining that the Legislature originally used the date of January 1, 2015 in AB 1222, extending that date to January 1, 2016, via AB 1783.
6 Respondent VTA does not dispute this fact.
7 See Government Code section 7522.04(f), which defines the term “new member.”
appear at the hearing. Although not a formal party to the case, the Governor’s Office, representing the State, filed a brief arguing that AB 1222 had created only a temporary exemption for transit employees that ended with the District Court decision in December 2014. (The Governor’s Office had litigated the case against DOL.)

On April 29, 2019, the ALJ issued a Proposed Decision in which she held that CalPERS had properly applied AB 1222 by treating the exemption as temporary, not permanent, for transit employees who were hired between PEPRA’s effective date of January 1, 2013, and the December 30, 2014 District Court decision. The ALJ found that the Legislature “intended to create a time-limited exemption from PEPRA for transit employees pending federal court resolution of PEPRA’s alleged conflict with 13(c) of the UMTA.” Recognizing that the court had a duty to adopt an interpretation that “comports most closely with the legislative intent,” the ALJ considered PEPRA’s intent and purpose, and the legislative history of AB 1222, in arriving at her conclusion.

The ALJ also found that the California Supreme Court had recently determined that PEPRA’s purpose was to create a “pension plan applicable only to newly hired public employees that is less expansive, and therefore less burdensome for the state and local governments, than the plans governing then-existing employees’ pensions.” (See Cal Fire Local 2881 v. California Public Employees’ Retirement System (2019) 6 Cal.5th 965, 974-75.) Thus, as interpreted by the Supreme Court, the ALJ held that the “overarching intent of the Legislature in enacting PEPRA was to reduce pension obligations of state and local governments across California.” The Legislature did so by making PEPRA broadly applicable to California public employers and public pension plans effective January 1, 2013.

The need for AB 1222 to take effect immediately, the Legislature declared, was to “preserve the funding for essential transportation infrastructure projects while balancing the public’s need to control the cost of public employee pension benefits.” The ALJ credited this statement as evidence of the Legislature’s intent as a whole. The ALJ also considered statements made by the Governor in a press release announcing AB 1222’s adoption, noting that AB 1222 “will temporarily exempt local agencies’ transit workers from PEPRA, but preserves the state’s ability to fight for pension reform law in court.” The ALJ also credited statements in the Legislative Counsel’s Digest regarding AB 1222 stating that the legislation would create only a temporary exemption from PEPRA for transit workers that would last only until the District Court issued a decision.

Based on these statements of legislative intent, the Proposed Decision concludes that the “two overarching goals of [AB 1222]… were to ensure that California continued to receive federal transit dollars so that California transit projects could proceed while also balancing PEPRA’s goal of controlling the costs of public employee pension benefits.” In enacting AB 1222, the Legislature understood the State could lose in its litigation with DOL over the 13(c) certifications, and therefore it authorized a permanent PEPRA exemption for transit workers in the event the State did not prevail. However, the ALJ noted that the State losing in court “was the only stated event for which the Legislature authorized a permanent exemption from PEPRA for transit employees.” Absent that
event, the ALJ held that the Legislature intended to “limit the time in which transit employees were exempt from PEPRA.” Since the State had prevailed in court against DOL, the ALJ concluded the permanent exemption was never triggered. For these reasons, the ALJ concluded, “the transit employee exemption must be read narrowly, and it must be read in a manner which harmonizes with the pension funding reforms of PEPRA.” The ALJ concluded that CalPERS followed this approach by interpreting the exemption to end when the District Court ruled in favor of the State on December 30, 2014, and that CalPERS had properly restored PEPRA’s application to transit employees effective the date of that decision. Although the litigation between DOL and the State regarding PEPRA continued until January 2018, the ALJ ruled that the “transit employee temporary exemption ended” with the District Court’s December 30, 2014 decision because that was when the court held that DOL erred in relying on PEPRA as a basis to refuse to provide section 13(c) certification to the subject transit grants.

The ALJ rejected Respondents’ arguments that transit employees hired during the AB 1222 exemption period “can earn classic benefits for the remainder of their careers.” Such an interpretation, the ALJ concluded, is “inconsistent with the purpose of PEPRA to reduce, not expand, public pension obligations.” The ALJ thus denied Respondents’ appeal and upheld CalPERS’ determination that AB 1222’s temporary exemption from PEPRA for transit workers ended with the December 30, 2014 District Court decision, and that CalPERS had properly restored PEPRA’s application to the subject transit workers effective that date.

**Argument: The Proposed Decision Properly Interprets AB 1222 and Should Be Adopted**

The only issue in this case is one of statutory interpretation. The Proposed Decision properly applies the law governing statutory construction to AB 1222 and reaches the correct conclusion: that AB 1222 created a temporary exemption from PEPRA for new transit employees, and that the exemption ended when the District Court ruled in favor of the State on December 30, 2014, requiring CalPERS to restore PEPRA’s application to all transit workers. The Proposed Decision is thorough in that it considers not just the plain language of AB 1222, but the extensive legislative history and documents showing that the Legislature crafted AB 1222 so that the smallest possible amount of PEPRA’s

---

8 The ALJ also rejected Respondents’ reliance on a memorandum from the Department of Finance (DOF), which stated that employees hired after the date of a district court ruling would be subject to PEPRA. The ALJ rejected Respondents’ argument that the DOF memo could be read to create a permanent exemption for employees hired before the date of the District Court decision—a class of employees that the DOF memo did not address—and ruled that even if the memo could be so interpreted, such an interpretation goes against the great weight of the legislative history which supports a narrow reading of the AB 1222 exemption. The ALJ also rejected Respondents’ reliance on failed legislation which sought to make the transit worker exemption permanent. Such bills, the ALJ ruled, are not probative of the Legislature’s intent in enacting AB 1222. Additionally, statements made by Respondent VTA in sponsorship of one of the bills, the ALJ held, reflected Respondent VTA’s intent and interpretation, not that of the Legislature.
pension reform savings would be sacrificed temporarily in return for ensuring that federal transit funding to California would not be halted during the federal court litigation.

Though not mentioned in the Proposed Decision, evidence presented and admitted at the hearing estimated that making transit workers hired before the District Court decision permanently exempt from PEPRA would cost local governments at least $150 million in PEPRA’s pension savings. It would be against the plain language of AB 1222, contrary to legislative history, contrary to PEPRA’s purpose, and contrary to the interests of all other CalPERS members who are subject to PEPRA, to grant transit workers a permanent exemption from PEPRA at a cost of $150 million to all other CalPERS members, without justification. For all of these reasons, the Board should adopt the ALJ’s careful and well-reasoned Proposed Decision as its own.

June 19, 2019

KEVIN KREUTZ
Senior Attorney