



Agenda Item 5a

June 11, 2012

ITEM NAME: Proposed Regulations – Timing of State Retirement Contribution to the Public Employees' Retirement Fund

PROGRAM: Retirement Program Accounting, Fiscal Services Division

ITEM TYPE: Action

RECOMMENDATION

Adopt the proposed addition to the California Code of Regulations (CCR) Title 5.5, sections 577 and 578 to specify dates for the State of California to remit payments of employer and employee retirement contributions to the Public Employees' Retirement Fund (PERF).

EXECUTIVE SUMMARY

Existing statute Government Code (G.C.) Section 20826 requires the State of California to quarterly appropriate the required employer retirement contribution payments to the California Public Employees' Retirement System (CalPERS). Additionally, G.C. Section 20831 provides that the State may not fail or refuse to make these payments "within applicable time limitations". In Fiscal Year (FY) 2011-12, the State proposed a change to the payment date for the third quarter of the fiscal year which was approved by the Board at the January 23, 2012 meeting, as within applicable time limitations. Going forward, these proposed regulations will provide specific payment date guidelines and transparency to the phrase "within applicable time limitations."

BACKGROUND

In an effort to mitigate cash flow problems within the General Fund, the State of California requested an extension of the customary third quarter employer retirement contribution payment from April 1st to April 16th. To maintain a financially sound trust, staff proposed early payment of the employer contributions in the second quarter of the fiscal year. Paying early in December to compensate for a later payment in April conforms to the payment guidance set forth in current statutes. This benefits both CalPERS and the State by allowing CalPERS to invest funds earlier and accommodating the State's cash flow timing concerns.

Regulations are necessary to clarify State retirement contribution payments, as existing statutes do not clearly describe State payment dates. Additionally, current statute does not specify a date employee contributions, which are deducted from their earnings, will be remitted to the PERF. Upon adoption, the proposed regulations will

address these uncertainties and provide clear and certain payment dates for State of California employer and employee retirement contributions.

At the January 23, 2012 Board meeting, the Board approved staff's recommendation to proceed with adding regulations that would specify payment dates. Staff proposed Title 5.5, Section 577 and 578 should be added to Chapter 2, Subchapter 1, of the California Code of Regulations. The proposed regulations were published by the Office of Administrative Law in the California Regulatory Notice Register.

The 45-day public comment period for the proposed regulations began on **March 9, 2012** and closed on **April 23, 2012**. Three comments were received. Two were from public agency employers inquiring if the proposed regulation applied to their payments. Staff responded that CalPERS contracted public agency employers are governed by other payment statutes and regulations; therefore, the proposed regulations had no impact on their payment dates. The third comment was submitted by a public agency employer suggesting a small language change. The recommended change would have affected the specific intent of the regulations and was not accepted by staff. No public hearing request was received 15 days prior to the close of the public comment period. Attachment B provides a summary of all the public comments and responses.

ANALYSIS

Article 5, within Chapter 2 of Division 1 of Title 2 of the CCR, addresses member contribution reporting but not payment dates. Thus, a new sub-section, Article 5.5, is proposed in the category of retirement contributions to specifically address payments and their dates.

A new proposed Section 577 directs the State of California to pay CalPERS the member portion of contributions on the business day after the end of the pay period to which they refer.

A new proposed Section 578 provides specific guidelines for the payment of quarterly State of California employer retirement contributions. Each quarter has a unique set of guidelines designed to address the State's cash flow issues and maintain a financially sound PERF. The following describes the dates when payments are due to CalPERS:

- Payment for payroll contributions for the first quarter of the fiscal year is the first business day in October.
- Payment for payroll contributions for the second quarter of the fiscal year is split into two due dates.
 - 1. For the October and November payroll periods, payment is to be made no later than December 17. This date is two weeks earlier than in the past.

- 2. The December payroll contribution amount is not known to the State until December 31, therefore, is paid on the first business day in January.
- The third quarter is also divided into two payments
 - 1. For the January and February payroll periods, payment is paid no later than April 16th. This is two weeks later than in the past, but is compensated for with the earlier second quarter payments.
 - 2. The March payroll contribution amount is not known to the State until March 31; therefore, it is paid on the first business day in April.
- Payment for the fourth quarter payroll contribution is paid on the first business day in July.

BENEFITS/RISKS

The proposed regulatory action will benefit the State of California's efforts to manage cash and mitigate the need to borrow funds in the open market and protect the PERF from any adverse financial consequences. As the future economic environment of California evolves, the proposed regulations will assure a consistent timeliness of retirement contribution payments under all economic scenarios.

There is no risk to the PERF for accepting the proposed regulations. Not accepting the proposed regulations leaves the statutory guidance of "within applicable time limitations" open to interpretations that may not be financially favorable to the PERF.

ATTACHMENTS

Attachment A - Proposed Regulations

Attachment B- Summary of Comments and Responses

Attachment C- Regulatory Notice Register

DAVE G. CORNEJO, Acting Division Chief
Fiscal Services Division

RUSSELL G. FONG
Acting Chief Financial Officer