



Agenda Item 7a

April 17, 2013

ITEM NAME: State Legislative Proposal: Clarification and Revision of Section 20574 of the Government Code

PROGRAM: Legislation

ITEM TYPE: Action

RECOMMENDATION

Sponsor legislation to amend Section 20574 of the Government Code administered by the Board of Administration (Board) of the California Public Employees' Retirement System (CalPERS or System), to clarify ambiguities and establish certain steps and requirements that will assist CalPERS staff in the orderly and efficient administration of the System.

EXECUTIVE SUMMARY

This proposed legislation would make changes to section 20574 of the Public Employees' Retirement Law (PERL) to provide clarity on matters related to the nature of public entities' obligations to the System and to establish new mechanisms to facilitate the collection of amounts due and owing to the System. The proposed changes will assist CalPERS staff in effectively and efficiently administering the System when matters arise concerning, but not limited to, instances of default and petitions by local public entities for relief under Chapter 9 of Title 11 of the United States Bankruptcy Code (Chapter 9). These changes would assist CalPERS staff in the orderly, effective and efficient administration of the System.

STRATEGIC PLAN

This proposal is consistent with Strategic Goal A to improve long-term pension and health benefit sustainability.

BACKGROUND

We are in the midst of incredibly challenging economic times that are affecting the fiscal health of our state and its municipalities and public agencies. Increasingly, public agencies are experiencing difficulty paying their debts that are due and owing, resulting in defaults on monetary obligations and even petitions for relief under Chapter 9, as seen in the cases of the City of San Bernardino and the City of Stockton.

Pursuant to collective bargaining agreements and other contracts with their employees, many public agencies have agreed to provide certain pension benefits to their employees. These public agencies, in order to provide these benefits to their employees, have elected to enter the CalPERS System. In order to provide these

promised benefits to their employees, contracting public agencies are required by the terms of applicable State law to make periodic payments to the System. These payments are necessary to maintain the integrity of the pension plans for the employees and retirees of these contracting public agencies and to ensure the continued soundness of the System as a whole. CalPERS has a fiduciary duty to protect the retirement security of all members. When contracting public agencies fail to make their contributions or make payments of any other amounts due and owing to the System, they adversely affect System soundness and administration and jeopardize CalPERS ability to provide promised pension and health benefits to the public agencies' retirees and employees.

CalPERS is the nation's largest public pension fund with approximately \$256 billion in assets. It administers retirement benefits for more than 1.6 million members, and spends over \$7 billion annually to provide health benefits for more than 1.3 million State, public school, and local public agency employees, retirees, and their families. Additionally, CalPERS spends over \$15.4 billion annually in pension benefits for nearly 552,000 retirees. These annual payouts for health and pension benefits are significant, and in order to maintain the soundness of the System and provide for its orderly, effective and efficient administration, contracting public agencies must be held responsible for paying all amounts owing to the System. Delays in the timely payment of amounts due and owing are problematic from an administrative and fiscal standpoint.

ANALYSIS

The proposed changes to section 20574 of the Government Code administered by the Board would address several issues, including, but not limited to the following:

- Amend section 20574 of the PERL to provide clarification and direction regarding the types of obligations that contracting public agencies are obligated to pay to the System, including, without limitation:
 - Employer contributions
 - Expenses for determining contributions
 - Costs of administering the System
 - Contributions required to be paid by contracting public agency employees (including those paid by a public agency on behalf of a member)
 - Any deficit in funding for earned benefits of a terminated agency
 - Interest on any late payment from the date the amount becomes due and payable to the date the public agency pays the System
 - Costs of collection
 - Attorney's fees
- Amend section 20574 of the PERL to provide CalPERS with a present lien on all assets of a contracting public agency in the amount of all obligations owed to the System.
- Amend section 20574 of the PERL to set forth a process by which CalPERS can enforce its lien on the assets of a defaulting

contracting public agency by delivering written notice to the public agency and any of its debtors.

- Amend section 20574 of the PERL to provide direction on the content of the Board's written notice to a defaulting contracting public agency (or any debtor thereof) to enforce its lien.
- Amend section 20574 of the PERL to direct the recipient of the Board's written notice to enforce its lien on the assets of a defaulting contracting public agency to impound the assets for subsequent release to the System.

BENEFITS/RISKS

Benefits of Proposed Amendments to Section 20574 of the PERL

- Provides clarity on the nature of public agencies' obligations to the System.
- Establishes mechanisms to facilitate the collection of amounts due and owing to the System.
- Facilitates CalPERS staff's orderly, effective and efficient administration of the System.
- Assists CalPERS in avoiding needless procedural disputes and associated legal costs.
- Assists CalPERS in fulfilling its role as responsible fiduciary and protecting the retirement security of its members.
- Strengthens the position of CalPERS in situations where public agencies default on obligations to the System, including instances in which a contracting public agency petitions for relief under Chapter 9.

Risks Should the Proposed Amendments to Section 20574 of the PERL Not Be Enacted

- Failure to provide clarification regarding the nature of public agencies' obligations to the System and to establish new mechanisms to facilitate the collection of amounts due and owing to the System may require the Board to develop and adopt additional regulations and/or additional procedures to address situations in which public agencies default on their obligations to the System.
- Failure to provide clarification regarding the nature of public agencies' obligations to the System may subject CalPERS to unnecessary legal or regulatory challenge, and to the costs associated with defending such challenges.
- Failure to provide clarification regarding the nature of public agencies' obligations to the System and to establish new mechanisms to facilitate the collection of amounts due and owing to the System may require CalPERS to initiate costly and time-consuming collection and legal proceedings to enforce public agency payment obligations.
- Failure to provide clarification regarding the nature of public agencies' obligations to the System and to establish new mechanisms to facilitate the collection of amounts due and owing to the System may jeopardize

CalPERS fiduciary duties to its members by adversely affecting the administration of the System.

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