



## Agenda Item 5c

April 16, 2013

**ITEM NAME:** Assembly Bill 785 (Weber) – Direct Mail Assistance

As Introduced February 21, 2013

*Sponsor: American Federation of State, County and Municipal Employees (AFSCME)*

**PROGRAM:** Legislation

**ITEM TYPE:** Action

### **RECOMMENDATION**

Adopt an **Oppose** position on Assembly Bill (AB) 785 because the bill requires the California Public Employees' Retirement System (CalPERS) to provide annuitants' personal information to third-parties for purposes that do not pertain to CalPERS administered programs or improve the delivery of benefits to the members. This bill is contrary to the Board of Administration's (Board) policy on mailing information to annuitants, reduces the Board's administrative authority, and creates legal, financial, and information security risks for the System.

### **EXECUTIVE SUMMARY**

AB 785 requires CalPERS to provide annuitant mailing information to a third-party vendor to assist a separate third-party entity's communication to CalPERS retirees through direct mailing. This mandate on CalPERS reduces the Board's administrative authority over direct communications with CalPERS annuitants. While the bill includes some measure of privacy and information protection, it unavoidably creates new risk for CalPERS retirees' personal information and endangers CalPERS members' trust in our stewardship of their information. In addition, the bill creates administrative costs that may not be fully recoverable, and has legal implications on CalPERS information security management and using System trust funds to assist non-System related direct mailings.

### **STRATEGIC PLAN**

This item is not a specific product of the Annual or Strategic Plans, but addressing legislation that affects CalPERS is a part of the regular and ongoing workload of the Office of Governmental Affairs.

### **BACKGROUND**

#### 1. Information Security

As of March 2013, more than 3,000 public employers in California contract with CalPERS to provide pension benefits for their approximately 1,102,440 current and former employees, and their 551,627 retirees, beneficiaries, and survivors

receiving a monthly allowance. All of these individuals trust CalPERS with their personal information, including birthdates, full names, addresses, beneficiary information, salary and benefit information, and Social Security numbers. In fact, existing law prohibits CalPERS from releasing a retiree's or beneficiary's address, home telephone number, or other personal information except for use by a public employer, which must also treat the data as confidential, or to an authorized representative of the member. Only a retiree's name, prior employer, and benefit amount may be made available to the public.

The sponsor of AB 785, AFSCME, previously requested CalPERS to provide names and addresses for a direct mailing under conditions similar to those proposed in this bill and CalPERS did not approve the organization's request.

## 2. Warrant Inserts

Currently, the State Controller's Office maintains the ability to place information in the monthly benefit warrants and warrant statements mailed to CalPERS retirees, referred to as warrant inserts. CalPERS employers and employee organizations occasionally seek Board approval for warrant inserts featuring employer-sponsored benefits available to retirees, such as vision and legal service plans, and information on various organizations representing CalPERS retirees.

On January 16, 1991, the Board adopted a Policy that reserved, for its own action, the final decision regarding warrant inserts proposed by employers or employee organizations (see Attachment 1). To be eligible for Board consideration, requestors must meet all the following standards:

- The inserts must pertain to Board-administered programs;
- A draft of the inserts must be submitted at least 90 days prior to the tentative mail out date;
- All costs associated with producing the inserts must be borne by the requesting organization; and,
- The requesting organization must be an employer or employee organization.

On June 16, 1999, the Board approved the request of the Statewide Coalition of Retired Employees (SCORE) to include an insert with September 1-dated warrants in odd-numbered years. The insert is provided to each retiree and seeks a response from members who might have an interest in one or more of the organizations of the coalition. In October 2004, the Board approved SCORE's request to move this insert to the March warrant of each odd-numbered year. This warrant insert is the only known existing insert of this type currently approved by the Board.

## **ANALYSIS**

### **1. Proposed Changes**

Specifically, AB 785 does the following:

- Allows an organization that provides employee representation or membership services to annuitants of the System to submit a request to CalPERS for assistance in performing direct mailings to annuitants of the System who are members of the organization or eligible to become members of the organization.
- Requires CalPERS, upon receiving a request, to provide a direct mailing to the annuitants of the System who are members of the organization or eligible to become members of the organization, subject to the requirements of this bill.
- Requires CalPERS to provide the data for addressing envelopes for the direct mailing to a mail processing center under a secure data-sharing agreement under which neither the organization nor any other entity shall have direct access to any names or addresses.
- Specifies that the mail processing center must be mutually agreed upon by CalPERS and the organization making the request.
- Clarifies that CalPERS would not be required to notify an annuitant whose data is released to a mail processing center in connection with a direct mailing made pursuant to this bill.
- Prohibits the direct mailings authorized by this bill from supporting or opposing any political party, ballot measure, or candidate in any election, including any election within the organization, but allows the mailings to be for any other lawful purpose.
- Requires the requesting organization to provide CalPERS with copies of all materials that will be included in the direct mailing.
- Requires the requesting organization to pay any and all reasonable expenses of the mailing.
- Makes a legislative finding that providing this assistance is in the interest of administering the CalPERS System in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries.

### **2. Description of Authorized Organizations is Overly Broad**

This bill empowers any organization that “*provides employee representation or membership services to annuitants of the System*” to demand direct mailing assistance from CalPERS. This definition is overly broad and could apply to almost any organization with the loosest connection to CalPERS or its retirees.

While the bill prohibits advocating for or against any political party, ballot measure, or candidate in any election, it does not prohibit advocating for any other lawful purpose, including legislation. For example, a group could require CalPERS to assist the direct mailing of material advocating a position on active legislation where the Board has also taken a position. Furthermore, a group

could qualify for direct mail assistance even though that group advocates policies that are contrary to members' vested rights, inaccurately describe the actions of the Board, or the statutes affecting members' benefits.

3. Information Security Issues

Although AB 785 would not allow a retiree's address to become public information and requires addressing data to be provided under a secure data-sharing agreement with a mailing center, it does not contemplate liability issues when retirees' data is mishandled. CalPERS has experience with direct contracting relationships with mailing centers that assist in the conduct of Board elections and the distribution of annual member statements. Through these direct contracts, CalPERS is able to dictate data usage with direct accountability measures in place.

The contracting relationship required by this bill is not comparable to prior contracts because CalPERS would be partnered with the requesting organization. This type of contracting relationship dilutes accountability for data confidentiality, especially because the requesting organization is supposed to pay for all reasonable costs. If the requesting organization is paying the mailing house, what is CalPERS recourse if retirees' data is mishandled? If CalPERS is paying the mailing house, what is CalPERS recourse if the requesting organization fails to reimburse the System properly? It is not clear how CalPERS would manage this contracting requirement without creating risk for data security or System finances, or both.

4. Potential Confusion About CalPERS Role with a Direct Mailing

Even if no personal information is mismanaged or released, retirees may legitimately question CalPERS security efforts when they receive an unsolicited direct mail piece that may appear to be from CalPERS. A direct mail piece would not state it was sent by CalPERS; the mail piece may specifically state that CalPERS did not send the mail. However, the mail may identify the individual's status as a CalPERS annuitant as the reason for receiving the mail piece.

This potential confusion about such items of direct mail may undermine member confidence in CalPERS and create questions about CalPERS efforts and protocols for maintaining data security and confidentiality. Further, this may drive inquiries by CalPERS annuitants to CalPERS call centers and online inquiry areas.

5. Allowing CalPERS Annuitants to Opt-Out

AB 785 does not contain provisions allowing CalPERS annuitants to opt-out of receiving direct mail sent pursuant to this bill. Administrative costs to develop a process for direct mail recipients to opt-out are anticipated by staff, but the bill does not provide clear authority to implement such an opt-out process. Such a process would be consistent CalPERS business practices, and presumably a requesting entity would not want to pay for a mailing to a member that has

proactively requested no contact. However, the bill could be interpreted to disallow an annuitant to opt-out, and CalPERS may not be permitted to implement this standard business practice.

6. Potential Legal Costs and Litigation

AB 785 leaves several key implementation issues unclear, creating the potential for legal costs and litigation if CalPERS decisions or interpretations incur lawsuits by organizations seeking direct mail assistance pursuant to this bill. The bill does not adequately explain how CalPERS and a requesting entity will mutually agree upon a mailing processing center, does not contain robust cost recover provisions to ensure CalPERS recoups all System costs, does not identify eligible organizations with enough clarity, does not clarify whether an annuitant may opt out of receiving direct mail, and does not properly explain the respective contracting responsibilities for CalPERS and the requesting entity to engage a mail processing center. Any or all of these implementation issues may create conflict between CalPERS and a requesting entity, and that conflict may result in litigation and legal costs.

Furthermore, the bill does not contain provisions to allow for the recovery of reasonable legal expenses incurred by CalPERS if sued by a requesting entity. These potential costs must be borne by the System.

7. Bill's Legislative Finding Not Consistent With the Board's Constitutional Authority

The State Constitution provides the CalPERS Board sole and exclusive responsibility to administer the System in a manner that will assure prompt delivery of benefits and related services to the System participants and their beneficiaries. The legislative finding in AB 785 that the above-described direct mailing assistance is in the interest of the CalPERS System and will assure prompt delivery of benefits and related services to the System participants and their beneficiaries is not consistent with the Board's constitutional authority, and should be removed or replaced with language that affirms the Board's sole and exclusive authority over the System.

8. Alternatives to Direct Mailing Assistance

There is no existing process or structure to implement the direct mailing assistance required by this bill. CalPERS would have to create new processes and procedures to, among other things, execute data queries to identify specific sub-populations of retirees, and compile their addresses. However, CalPERS does have a process for approving warrant inserts, which ensures appropriate and secure communications with annuitants. Any eligible employee organization may seek approval for a warrant insert using this existing process.

9. Costs

Benefit Costs

None.

### Administrative Costs

While the bill requires requesting organizations to “pay any and all reasonable expenses” for these mailings, CalPERS is unlikely to be able to recover all its administrative costs as the potential impacts on workload span the organization, and extend even beyond. There are likely minimum staffing costs of at least \$205,000 annually to develop, validate, maintain, and update requested data. This is only an initial estimate with actual costs dependent on the number and complexity of requests made pursuant to this bill.

Additionally, the bill imposes unknown costs related to contracting with a third-party mailing center and managing inquiries from affected CalPERS members. Depending on the amount and complexity of mail requests, the bill imposes unknown costs to develop, manage, and execute contracts with third-party mailing centers to ensure proper data usage, appropriate mailing standards (such as not using postcards to request personal information), and overall adherence to contract terms. Responsible customer service to members will require CalPERS to develop and implement a process for members to restrict the use of their names and address information, and require additional staff capacity to respond to member inquiries related to these mailings.

## **BENEFITS/RISKS**

### 1. Benefits of No Action

- CalPERS may maintain current levels of data confidentiality.

### 2. Risks of AB 785 Becoming Law

- Increased potential for the mismanagement of CalPERS retirees’ personal information, or unauthorized public release.
- Financial exposure for the System if CalPERS is unable to recover appropriate costs for direct mailing assistance from requestors.
- Member confusion surrounding the source of such direct mail may compromise member confidence in CalPERS information security efforts, even if retiree data is not compromised.
- Increased pressure on staff resources for customer service if receipt of unsolicited direct mail drives retirees’ questions to CalPERS call center or online my|CalPERS inquiry centers.

## **ATTACHMENTS**

Attachment 1 – Board Policy regarding warrant inserts

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