



Agenda Item 5

May 14, 2013

ITEM NAME: Public Hearing and Proposed Amended Regulations to Implement PEPRA

PROGRAM: Customer Account Services, Benefit Services

ITEM TYPE: Action

RECOMMENDATION

Approve modified regulatory action and subsequent posting for an additional 15-day comment period. These regulations establish the California Public Employees' Retirement System's (CalPERS) implementation and interpretation of certain provisions within Assembly Bill (AB) 340, known as the Public Employees' Pension Reform Act (PEPRA) of 2013, and related pension reform changes to the Public Employees' Retirement Law (PERL) and law governing Legislative Employees' Retirement System (LRS).

EXECUTIVE SUMMARY

The proposal to add regulation Sections 579, 579.1, 579.2, 579.4, 579.5, and 579.24 to Chapter 2 of Division 1 of the California Code of Regulations (CCR) was approved at the CalPERS Board of Administration meeting on February 21, 2013. These regulations were then posted by the Office of Administrative Law (OAL) for a 45-day public comment period from March 15, 2013, through April 29, 2013. Two comments were received and CalPERS provided a formal response to each of the comments. Neither of the public comments required modifications to the proposed regulations text. However, out of an abundance of caution we are removing Section 579.5 from the regulatory action since language is anticipated to be added to Senate Bill (SB) 13, currently pending before the Assembly, which will remove the term "similarly situated" from Government Code (GC) section 7522.30(c). With Board approval of this modification to remove Section 579.5, the regulatory action will be noticed for an additional 15-day public comment period. The revised regulation text will return to the Board in June for its consideration of additional comments, if any, and for adoption to be submitted to OAL for its final review and addition to the CCR if approved.

BACKGROUND

At the February 21, 2013, CalPERS Board of Administration meeting, the Board approved the proposed regulatory action, and subsequently, the Notice of Proposed Regulatory Action was filed with OAL which initiated the 45-day written comment period where interested parties could submit public comments relevant to the proposed regulatory action.

The written public comment period ended April 29, 2013, with only two comments, and neither required modification to the proposed regulations text. However, anticipated language in SB 13 may remove the term “similarly situated” from GC section 7522.30(c), thereby rendering proposed regulation Section 579.5 inapplicable. The regulatory action, therefore, has been modified to remove Section 579.5 and will be noticed for an additional 15-day comment period. Should SB 13 not include language that removes “similarly situated,” staff intends to include the “similarly situated” definition in a future regulatory action later this year.

Additionally, a public hearing was noticed for today, May 14, 2013, at 10:00 a.m., to allow interested parties to present testimony and comments regarding the proposed regulatory action. The Board and CalPERS staff are not required to respond to public comments during the hearing; however, all comments must ultimately receive a written response from CalPERS as part of the final rulemaking file.

ANALYSIS

For background, many of the new pension reform provisions apply to “new members” (a term defined by GC section 7522.04(f)) and not to existing or “classic members” (those members who entered into membership with a retirement system on or before December 31, 2012, who do not meet the definition of a “new member” in Section 7522.04(f)). The distinction between the two types of members is very important when it comes to determining the member’s appropriate retirement formula, final compensation periods, caps on compensation, and other rights to and limitations on retirement benefits. It is therefore important that CalPERS have a well-defined implementation plan to establish the clear meaning of key terms that will be required to make such determinations. The proposed regulations interpret and clarify various terms used to: 1) categorize members as new members or classic members; 2) identify the required contribution rates and compensation limits; and, 3) determine the required level of retirement benefits and benefit limitations.

The Notice of Proposed Regulatory Action (Attachment A) was published in the California Regulatory Notice Register (CRNR) 2013, No. Z2013-0305-11, on March 15, 2013 (Attachment B). In the Notice of Proposed Regulatory Action, the public hearing was noticed for May 14, 2013, at 10:00 a.m. The initial 45-day written comment period for the proposed regulatory action began on March 15, 2013, and closed on April 29, 2013. At the time this agenda item was prepared, two public comments have been received and CalPERS staff has responded to the comments. A summary of all public comments and staff’s response to each comment is provided as Attachment C of this agenda item. The original public comments received from interested parties are included as Attachment D.

The proposed regulations did not require modifications as a result of these public comments; however, Section 579.5 "Similarly Situated" is being removed, as detailed above. The proposed regulatory action (including the removal of 579.5) is included as Attachment E for the Board's consideration.

BENEFITS/RISKS

As previously provided, the proposed regulations are designed to implement the new pension reform provisions. By interpreting key phrases and outlining key processes, the proposed regulations will provide clarity and uniformity for CalPERS, its members, employers and stakeholders and should help avoid protracted litigation over disputes relating to how the new pension reform provisions should be interpreted. The proposed regulations will also ensure that individuals are properly enrolled into membership from the start so that proper contributions are collected on their behalf, and the proposed regulations will help ensure the correct level of benefits will be provided to these individuals at the time they retire. Additionally, the proposed regulations make clear various processes that will be used by CalPERS to implement the pension reform laws which should make administration of these new statutes more efficient.

Also as previously detailed, without the adoption of the proposed regulations, there are significant risks. Some of these risks include the fact that not all CalPERS-covered employers may interpret the new legislation consistent with CalPERS interpretation, and that could lead to inconsistent application of these new laws. Moreover, without the proposed regulations, employers might interpret certain phrases in a manner that could be potentially detrimental to CalPERS members. Further, should the proposed regulations not be promulgated, there could be confusion amongst CalPERS-covered employers when enrolling members, which could lead to members being improperly enrolled as new members when they should have been enrolled as classic members, or vice versa. Proper enrollment is critical to ensuring that members receive the correct benefit formula, final compensation period, and applicable cap on pensionable compensation, as well as ensuring that members pay the statutorily required amount of member contributions amounts. Finally, without the proposed regulations, legal challenges may be undertaken to resolve disputes over the meaning of various key phrases used in the pension reform statutes.

ATTACHMENTS

- Attachment A – Notice of Proposed Regulatory Action
- Attachment B – Published CA Regulatory Notice Register
- Attachment C – Public Comments and Summary
- Attachment D – Actual Public Comments and Responses
- Attachment E – Proposed PEPRA Regulations (no modifications required after Public Comments but Section 579.5 “Similarly Situated” has been removed)

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