Agenda Item 5

December 17, 2013

ITEM NAME: State Legislative Proposal: Policy and Technical Amendments to the Public Employees' Retirement Law

PROGRAM: Legislation

ITEM TYPE: Action

RECOMMENDATION
Sponsor legislation to make the following minor policy and technical changes to sections of the Government Code administered by California Public Employees' Retirement System (CalPERS).

EXECUTIVE SUMMARY
This proposal would make several changes to various provisions of the Public Employees' Retirement Law (PERL) identified by staff as necessary for the maintenance and good governance of CalPERS and to ensure that its statutes are clear.

STRATEGIC PLAN
This proposal supports Strategic Goal A to improve long-term pension and health benefit sustainability.

BACKGROUND
These laws govern CalPERS and the processes by which it operates. During the course of normal operations, areas are identified where the law has not been kept current with the duties CalPERS is expected to perform. In these cases, legislative corrections are required.

ANALYSIS

Employer Contribution Rate Applied to Adjustments
Under Government Code section 20533, if a correction of the amount of compensation reported by a contracting agency requires additional employer contributions, the contributions must be computed using the employer contribution rate in effect at the time of the adjustment. However, when the current employer contribution rate is used to adjust previous period compensation reporting errors, the difference between the two rates may be so great in some cases that such adjustments result in the employer paying more, and in some cases the employer paying less, than is necessary to cover the cost of the benefit.

Currently, payroll corrections and employer contribution adjustments are completed by CalPERS employers on an ongoing basis utilizing the my|CalPERS system, which is designed to use the current employer rates when employers submit payroll adjustments for prior periods. There are thousands of these employer initiated adjustments completed each month that automatically apply the current employer contribution rates for both current year and prior period adjustments.

With the magnitude of automated employer corrections that apply current employer contribution rates to prior period adjustments, there is potential for the adjustments to create an equity issue. The following are examples where the adjustments can be overstated or understated if CalPERS continues to use the current employer rates for processing adjustments for prior year contributions:

- Underpayment of Employer Contributions: If an employer had a higher employer contribution rate when the contribution should have been reported, and has a lower employer contribution rate at the time of the adjustment, the employer would be contributing less than is necessary to cover the cost of the benefit.

- Overpayment of Employer Contributions: If an employer had a lower employer contribution rate when the contribution should have been reported, and has a higher employer contribution rate at the time of the adjustment, the employer would contribute more than is necessary to cover the cost of the benefit.

To more accurately reflect the correct contributions owed and minimize inequity, this proposal would allow the use of the employer contribution rate in effect at the time the compensation is earned when making prior period adjustments.

Expanding the Period of Time Allowed to Change an Option Election

As an alternative to receiving an unmodified allowance, a CalPERS member may elect to receive a reduced monthly benefit so that upon his or her death, either a lump sum of remaining member contributions will be paid, or an ongoing monthly allowance will be paid, to one or more named beneficiaries. These alternative choices are called Options or Optional Settlements.

Existing law (Government Code section 21252) allows members to change their option election prior to their first benefit payment on account of any retirement allowance or, in the event of a change of retirement status after retirement, prior to the benefit payment immediately following the change in retirement status. However, the recently implemented my|CalPERS member database is now able to release several types of member payments on a weekly basis, and provides CalPERS additional flexibility to accept members' changes to their option elections even after the first payment is made. This proposal would allow members to make a change to their option election if CalPERS receives their request within 30 days of the issuance of their first retirement payment. This will allow members who may not realize the extent to which the option they elected, combined with tax and other benefit deductions, has reduced their monthly retirement allowance, to make a different choice.

Public Employees' Pension Reform Act of 2013 (PEPRA) Conformity
Assembly Bill 340 (Furutani, Chapter 296, Statutes of 2012) enacted significant changes to public retirement systems in California, including creating the PEPRA and making other changes to the PERL. With any complex legislation and equally complicated implementation project, statutory clean-up is necessary to conform the old laws to the new laws. In 2013, the Board sponsored Senate Bill 220 (Beall, Chapter 526, Statutes of 2013), to begin the process of conforming the CalPERS governing statutes to the PEPRA. Staff continues to identify areas of the law that would benefit from greater conformity to the changes made by the PEPRA and anticipates including them in the CalPERS-sponsored legislation.

Technical Correction to the Judges Retirement Law II
Under existing law (Government Code sections 75080 and 75080.5), a retired judge that participates in the Judges' Retirement System I (JRS I) cannot be elected or appointed to serve as a judge while continuing to receive retirement benefits through the JRS I, except for a retired judge while serving under assignment by the Chair of the Judicial Council. In such instances, the benefit of the retired judge is reduced by the amount of that salary or compensation earned during the time he or she is on assignment, and he or she does not earn service credit or become entitled to additional retirement benefits on account of that assignment. The Judges' Retirement Law II (JRL II) does not contain a similar prohibition, which may cause unnecessary confusion and misunderstanding for members and employers.

This proposal would add a similar provision to the JRL II to make clear that a retired judge that participates in the Judges' Retirement System II (JRS II) cannot be elected or appointed to serve as a judge while continuing to receive retirement benefits through the JRS II, except for a retired judge while serving under assignment by the Chair of the Judicial Council.

Other Technical Changes
This proposal also corrects inaccurate code section references, deletes obsolete reporting requirements, and makes other technical changes to conform the PERL to state and federal law.

BENEFITS/RISKS

1. <u>Benefits</u>
    - Ensures CalPERS administers the PERL in an efficient manner by eliminating ambiguity that leads to conflicting interpretations and unnecessary confusion.

- Improves consistency and clarity of CalPERS statutes in a post-PEPRA program environment.
- Eliminates confusion and misunderstanding in the JRS II statute by clarifying that retired judges must reinstate to active service if elected or appointed to serve as a judge.
- Allows members more flexibility to make changes to their option elections.

2. <u>Risks</u>
   - Failure to use the historical employer contribution rates when making prior period adjustments can increase financial risks and liabilities to the System.
   - Failure to improve conformity between the PEPRA and the PERL may limit CalPERS ability to fully implement the new law and subject the System to unnecessary legal challenges and to the costs associated with defending such challenges.

DANNY BROWN, Chief
Office of Governmental Affairs

ANN BOYNTON
Deputy Executive Officer
Benefit Programs Policy and Planning