



Agenda Item 5

December 15, 2015

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

PROGRAM: Legislation

ITEM TYPE: Action

RECOMMENDATION

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

EXECUTIVE SUMMARY

This proposal would amend several provisions of the Public Employees' Retirement Law (PERL) identified by staff as appropriate 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

In general, the PERL governs CalPERS and the plans administered by the CalPERS Board of Administration (Board). During the course of normal operations, inconsistencies and ambiguities among related statutes may be identified, which can be made clear through minor technical amendments to the applicable law. In these cases, legislative clarifications are recommended.

ANALYSIS

The following are technical amendments to sections of the Government Code:

Board Approval of Association Health Plan Rates

Beginning in 1987, statute requires the Board to annually approve the proposed rates for three association health plans: the California Association of Highway Patrolmen (CAHP) Health Benefits Trust; the California Correctional Peace Officers Association (CCPOA) Benefit Trust Fund; and the Peace Officers Research Association of California (PORAC) Insurance and Benefit Trust. In practice, the association plans are generally responsible for negotiating with insurers concerning premiums and coverage, and providing health benefit plan administration and services to their enrollees. Once the association plans establish their rates, they submit the rates to CalPERS for approval. Upon approval, the negotiated rates are included in the state's

share of premiums to the Department of Finance, and CalPERS allows association members to elect coverage in their respective association health plans during the annual open enrollment process.

In order to better reflect the roles and responsibilities of the association plan administrators and CalPERS in current business processes, staff recommends removing from statute the requirement that the Board set standards for, and approve the rates for the association plans, and clarify CalPERS duties in enrolling association members in these plans and providing notice of the state's share of premiums as part of the budget process.

Final Compensation for Purposes of Concurrent Retirement

Under existing law, a CalPERS member that is also a member of a reciprocal retirement system, who qualifies for reciprocity, and retires from both systems concurrently, is generally able to use the highest compensation amount earned under either system to calculate his or her CalPERS retirement allowance. For purposes of identifying whether the CalPERS compensation earnable amount or that of the University of California Retirement System (UCRS) or a 1937 Act County Retirement System ('37 Act System) should be used to calculate the CalPERS portion of a member's concurrent retirement benefit, existing law defines compensation earnable as "*the average monthly salary during any period of service as a member*" of the UCRS or '37 Act System. However, the PERL does not explicitly identify the period over which the member's highest average final compensation must be calculated.

CalPERS staff calculates the final compensation amount for a member applying for concurrent retirement based on their "highest annual average compensation" during any consecutive 12 or 36 month period of service covered under the UCRS or a '37 Act System that otherwise applies to the member based on his or her membership date. This is consistent with the business practices of these retirement systems and the provisions of the PERL that define final compensation for other CalPERS members.

In order to clarify existing law to reflect these retirement systems' current business practices and create consistency with other sections of the PERL relating to the determination of final compensation, staff recommends amendments to require the final compensation of a CalPERS member applying for concurrent retirement using their compensation earnable under UCRS or '37 Act System, be based on their highest annual average compensation during any consecutive 12 or 36 month period.

Member Designation of Final Compensation Period

Current law allows a member to designate on his or her retirement application the highest average annual compensation during a 12 or 36 month period of covered employment, if he or she believes that the period designated provides a higher average annual compensation amount than the 12 or 36 month period immediately preceding his or her retirement date or last separation from service. Allowing a

member to make this designation was once necessary because CalPERS automated systems were, at one time, designed to calculate final compensation using a member's period of service immediately prior to separation or retirement. Upon implementation of the my|CalPERS system, which automatically searches payroll records for the member's highest final compensation period when calculating retirement benefits, all references to the member's ability to designate an alternate period have been removed from both hardcopy and online retirement applications.

To conform the PERL to CalPERS business practices and enhanced automated capabilities, staff recommends removing the language that allows a member to designate his or her highest final compensation period for purposes of calculating retirement benefits because such action is no longer necessary.

Conversion of Sick Leave to Service Credit

Under existing law, any unused sick leave and unused educational leave can be converted to additional retirement service credit if a member covered under the state or school pools retires within 120 days of separation from employment, with one day of sick leave equaling .004 of a year of service under CalPERS. Local agencies can also provide this benefit to their employees through contract amendment. Because current statute does not explicitly define what constitutes a day of sick leave or educational leave, CalPERS staff typically spends additional time and resources educating employers how to properly report and certify members' unused leave.

To further clarify existing law and improve employer compliance, staff recommends specifying this conversion ratio in statute to make explicit that one day of unused sick leave or educational leave is equivalent to an eight hour day for purposes of making the necessary conversion to retirement service credit.

Post Retirement Survivor Allowance – Expanded Definition of Marriage

Existing law allows a surviving registered domestic partner to be eligible to receive a CalPERS survivor allowance if his or her partnership was registered with the Secretary of State at least one year prior to the member's service retirement date, or as of the member's disability retirement date, and continuously until the date of the member's death. If the member retired prior to January 1, 2006, the date which the above provision became law, the PERL requires both the member and his or her registered domestic partner to sign an affidavit stating that they would have qualified to be registered as domestic partners in time to meet the above requirements.

However, the law does not provide members who retired before they could legally marry their same-sex spouses to qualify for a survivor continuance if they did not previously register as domestic partners. CalPERS staff have received inquiries from members who, instead of becoming registered domestic partners, waited to marry their spouses. As a result, they have lost the opportunity to designate their spouse for a survivor allowance, and have no means under the PERL to confirm their eligibility

as is provided to members in registered domestic partnerships under similar circumstances.

In order to provide these married CalPERS annuitants the same designation rights as provided to similarly situated annuitants in a registered domestic partnership, staff recommends statutory changes to provide a survivor continuance to same-sex couples who never entered into a registered domestic partnership and who retired before it was legally possible to marry their same-sex spouse so long as they sign an affidavit that they would have met the conditions had same-sex marriage been legal.

Other Technical Changes

This proposal will also make corrections to inaccurate code section references and other technical changes to the PERL in accordance with other provisions of state and federal law.

BUDGET AND FISCAL IMPACTS

Not applicable.

BENEFITS/RISKS

1. Benefits

- Ensures CalPERS administers the PERL in an efficient manner by minimizing potential ambiguity that may lead to conflicting interpretations.

2. Risks

- Administering provisions that may result in conflicting interpretations will result in increased staff resources that could be mitigated with the proposed clarifying technical changes.

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