December 19, 2018

**Item Name**: Proposed Decision – In the Matter of the Appeals Regarding the Final Compensation Calculations of MARK E. BILLS and JUDI L. CUTAIA, Respondents, and CITY OF DAVIS, Respondent.

**Program**: Employer Account Management Division

**Item Type**: Action

**Parties’ Positions**

Staff argues that the Board of Administration should adopt the Proposed Decision.

Respondents Mark E. Bills’ (Respondent Bills) and Judi L. Cutaia’s (Respondent Cutaia) position is included in Attachment C, if any.

**Strategic Plan**

This item is not a specific product of either the Strategic or Annual Plans. The determination of administrative appeals is a power reserved to the Board of Administration.

**Procedural Summary**

Respondents Bills and Cutaia retired from the City of Davis in 2012 and 2014, respectively. In October 2016, CalPERS’ Office of Audit Services (OFAS) conducted an audit of the City of Davis and found that certain longevity payments, based on unused cafeteria benefits reported as special compensation to CalPERS for the respondents, did not qualify as reportable income. CalPERS notified Respondents that it was adjusting their final compensations in order to correct the erroneous reportings which would reduce their pensions going forward. CalPERS also calculated overpayment amounts for each of the respondents which they were asked to repay to CalPERS.

Respondents Bills and Cutaia submitted appeals regarding CalPERS’ determinations of their final compensation calculations and the matters were heard by the Office of Administrative Hearings on July 19, 2018. Due to Respondent City of Davis’ failure to appear, the case proceeded as a default under Government Code section 11520 as to that party only. A Proposed Decision was issued on October 30, 2018, denying the appeals.
Alternatives

A. For use if the Board decides to adopt the Proposed Decision as its own Decision:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System hereby adopts as its own Decision the Proposed Decision dated October 30, 2018, concerning the appeals of Mark E. Bills and Judi L. Cutaia; RESOLVED FURTHER that this Board Decision shall be effective 30 days following mailing of the Decision.

B. For use if the Board decides not to adopt the Proposed Decision, and to decide the case upon the record:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System, after consideration of the Proposed Decision dated October 30, 2018, concerning the appeals of Mark E. Bills and Judi L. Cutaia, hereby rejects the Proposed Decision and determines to decide the matter itself, based upon the record produced before the Administrative Law Judge and such additional evidence and arguments that are presented by the parties and accepted by the Board; RESOLVED FURTHER that the Board's Decision shall be made after notice is given to all parties.

C. For use if the Board decides to remand the matter back to the Office of Administrative Hearings for the taking of further evidence:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System, after consideration of the Proposed Decision dated October 30, 2018, concerning the appeals of Mark E. Bills and Judi L. Cutaia, hereby rejects the Proposed Decision and refers the matter back to the Administrative Law Judge for the taking of additional evidence as specified by the Board at its meeting.

D. Precedential Nature of Decision (two alternatives; either may be used):

1. For use if the Board wants further argument on the issue of whether to designate its Decision as precedential:

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System requests the parties in the matter concerning the appeals of Mark E. Bills and Judi L. Cutaia, as well as interested parties, to submit written argument(s) regarding whether the Board’s Decision in this matter should be designated as precedential, and that the Board will consider the issue whether to designate its Decision as precedential at a time to be determined.

2. For use if the Board decides to designate its Decision as precedential, without further argument from the parties.

RESOLVED, that the Board of Administration of the California Public Employees’ Retirement System, hereby designates as precedential its Decision concerning the appeals of Mark E. Bills and Judi L. Cutaia.
**Budget and Fiscal Impacts:** Not applicable

**Attachments**
Attachment A: Proposed Decision
Attachment B: Staff’s Argument
Attachment C: Respondent(s) Argument(s)

DONNA RAMEL LUM  
Deputy Executive Officer  
Customer Services and Support