

## MINUTES

### REGULAR BOARD MEETING MARIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

One McInnis Parkway, 1<sup>st</sup> Floor  
Retirement Board Chambers  
San Rafael, CA

November 2, 2011 - 9 A.M.

---

**EVENT CALENDER** 9 A.M. Regular Board Meeting

**CALL TO ORDER** Chair Gladstern called the meeting to order at 9:07 A.M.

**ROLL CALL** PRESENT: Bolger, Brenk, Given, Gladstern, Haim, McFarland,  
Richardson, Webb (retiree alternate)

ABSENT: Phillips

### **MINUTES**

It was M/S Bolger/Brenk to approve the September 15, 2011, Investment Committee Meeting Minutes as submitted. The motion was approved by unanimous vote.

It was M/S Richardson/McFarland to approve the October 12, 2011, Regular Board Meeting Minutes as submitted. The motion was approved by unanimous vote.

#### A. **OPEN TIME FOR PUBLIC EXPRESSION**

Note: The public may also address the Board regarding any agenda item when the Board considers the item.

No public comment.

#### B. **ELECTION OF BOARD OFFICERS**

Election of Board Chairperson, Vice Chairperson and Secretary (**Action**)

Trustee McFarland nominated Trustee Maya Gladstern as Board Chairperson, seconded by Haim, approved by unanimous vote.

Maya Gladstern nominated Trustee Bernadette Bolger as Board Vice Chairperson, seconded by Trustee Richardson, approved by unanimous vote.

Trustee Haim nominated Trustee Gregory Brenk as Board Secretary, seconded by Trustee Richardson, approved by unanimous vote.

C. **BOARD OF RETIREMENT MATTERS**

1. Administrator's Report (Oral)

a. Administrator's update

Retirement Administrator Jeff Wickman introduced new Assistant Retirement Administrator Michelle Hardesty. Administrator Wickman noted that Ms. Hardesty's initial priorities would be to meet individually with staff and learn their roles and get up to speed on the CPAS implementation. Helen Moody will begin focusing primarily on the CPAS implementation and begin transitioning daily work to Ms. Hardesty.

The Board of Supervisors reappointed Trustee Jerry Richardson to a new term as trustee on the Board of Retirement. Mr. Wickman noted that Trustee Richardson had taken his oath of office earlier that morning at the County Administrator's Office.

Mr. Wickman met recently with a group of Managers and Supervisors from the Marin County Community Development Agency. The meetings are designed to provide background and context on current public pension issues and provide education on MCERA's processes. The trustees encouraged the Administrator to continue his proactive approach to communications, and Chair Gladstern suggested such presentations should be scheduled each quarter for all members.

Mr. Wickman along with several trustees will participate in the SACRS Fall conference November 15 through 18.

Mr. Wickman mentioned two upcoming meetings with MCERA investment managers, Wellington and Clifton, and invited trustees to attend subject to Brown Act quorum limitations.

Mr. Wickman discussed Governor Brown's recent statement on pension reform. The twelve point proposal does not contain specific legislative language so there is only an initial analysis of the potential impacts. Chair Gladstern observed that MCERA has taken action to address a number of the items in the proposed changes including limiting pension benefit spiking.

b. Staffing update

No staffing changes.

c. Facility Use Report

No facility use.

- d. Future meetings
  - November 3            Investment Committee
  - November 29        Finance and Risk Management Committee
  - December 14        Regular Board

2. Committee Reports

a. Governance Committee

1. Placement Agent Payment Disclosure Policy (Action)

Consider and take possible action on Governance Committee’s recommendation to adopt amendments to Policy regarding SB 398

Governance Committee Chair Brenk stated that the Placement Agent Payment Disclosure Policy revision simplifies the Policy by referencing the applicable statute as to the definition of placement agency. Trustee Haim discussed the compliance process for the Policy with Mr. Wickman and Counsel Dunning indicated that each of MCERA’s managers will be responsible for providing accurate disclosures in accordance with California law as set forth in the Policy. The Policy along with the relevant statutory material will be communicated to MCERA’s managers each year.

Based on the action of the Governance Committee, Committee Chair Brenk recommended that the Board adopt amendments to the Placement Agent Payment Disclosure Policy as submitted. The motion was approved by unanimous vote.

2. Senior Management Contingency Policy (Action)

Consider and take possible action on Governance Committee’s recommendation to adopt senior management contingency policy

Committee Chair Brenk stated that the proposed Senior Management Contingency Policy provides for contingencies in the event that the Retirement Administrator or Assistant Retirement Administrator is unable to perform the duties of the position. Trustee Brenk reviewed key provisions of the new Policy, and a non-substantive amendment to the draft was proposed.

Based on the action of the Governance Committee, Committee Chair Brenk recommended that the Board adopt the Senior Management Contingency Plan Policy, as amended. The motion was approved by unanimous vote.

3. Compensation Earnable Regarding Severance Pay Resolution (Action)

Consider and take possible action on Governance Committee’s recommendation to adopt compensation earnable resolution clarifying exclusion of severance pay

Committee Chair Brenk reviewed key elements of the proposed resolution, which states past practice regarding exclusion of severance pay from compensation earnable and clarifies that such practice applies whether severance pay is made

after, or just prior to, an employee's separation from employment. Trustee Haim clarified that the provisions of the resolution would be communicated to plan sponsors.

Based on the action of the Governance Committee, Committee Chair Brenk recommended that the Board adopt the Resolution Clarifying Exclusion of Separation Payments from Calculation of Retirement Allowances as submitted. The motion was approved by unanimous vote.

**MARIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION  
BOARD OF RETIREMENT RESOLUTION NO. 2011/12-04 CLARIFYING EXCLUSION  
OF SEPARATION PAYMENTS FROM CALCULATION OF RETIREMENT  
ALLOWANCES**

WHEREAS, the Marin County Employees' Retirement Association ("MCERA") and the MCERA Board of Retirement ("Board") are governed by the County Employees Retirement Law of 1937 (Gov. Code sections 31450, et seq.) ("CERL"); and

WHEREAS, retirement boards that operate under CERL are required to determine a member's "average compensation" when calculating his or her "compensation earnable", and a member's "final compensation" is then determined based upon his or her "average annual compensation earnable" during the measuring period elected by the member (Gov. Code sections 31461, 31462, and 31462.1); and

WHEREAS, some MCERA members are currently permitted and/or may in the future be permitted, pursuant to memoranda of understanding and other employment contracts or agreements (collectively "Contracts"), to receive *in-service* cash payments that are conditioned upon their separation from service; and

WHEREAS, the California Supreme Court determined in *Ventura County Deputy Sheriffs' Ass'n v. Board of Retirement of Ventura County Employees' Retirement Ass'n*, 16 Cal. 4th 483 (1997) ("*Ventura*") that CERL requires such in-service cash payments to be treated as "compensation" under Government Code section 31460 for purposes of calculating compensation earnable. The Supreme Court in *Ventura* did not, however, limit a retirement board's discretion to define compensation earnable in a manner that limits artificial inflation, or "spiking", of retirement allowance calculations potentially created when such in-service cash payments include more compensation in a retirement allowance calculation than the member is able to earn, and permitted to receive in cash, during their final compensation period (pro-rated by month); and

WHEREAS, since *Ventura*, courts have determined that in-service payments that are made solely in contemplation of an individual's separation from employment are not pensionable. *Salus v. San Diego County Employees' Retirement Association* (2004) 117 Cal.App.4th 734, 740 ("payments made solely on condition that [an] employee retire [are] not part of final compensation, otherwise 'spiking' of pension benefits would occur"); and

WHEREAS, the Board seeks to act in a manner that is consistent with its fiduciary duties of loyalty and care to serve the overall best interests of all its members and beneficiaries, and believes this Resolution furthers that purpose; and

WHEREAS, defined benefit retirement systems generally disfavor “spiking” because of dangers posed thereby to the integrity of the actuarial funding scheme supporting retirement benefits provided to all members, as well as the increased potential for unfair cross-subsidies between active members, that arise as a result of such manipulation. *See generally* Gov. Code section 31461.5; *Hudson v. Board of Retirement of the Public Employees’ Retirement System*, 59 Cal. App. 4th 1310, 1324 (1997) (interpreting Government Code section 20022 as excluding conversions in lieu of benefits “made for the express purpose of enhancing... retirement benefits”); and legislative history of Senate Bill 53 of 1993-1994 for discussion of several Public Employees’ Retirement Law provisions enacted to prevent spiking; and

WHEREAS, the definition of “compensation earnable” in Government Code section 31461 limits the “compensation” included therein to that which is “earnable” during the final compensation measuring period, rather than additional amounts that may be added in contemplation of retirement; and

WHEREAS, MCERA already excludes from compensation earnable calculations any *post-separation* payments a member receives from an MCERA plan sponsor that constitutes “severance”, “termination,” “retirement incentive,” or analogous payments that are made to a member only in contemplation of that individual’s separation from service (collectively “Separation Payments”).

WHEREAS, the Board seeks to clarify that, prospectively, all Separation Payments will be excluded from compensation earnable determinations by MCERA, even if they happen to be made just *prior* to a member’s separation from service.

NOW, THEREFORE, BE IT RESOLVED that the MCERA Board of Retirement declares the following:

1. The foregoing Recitals are incorporated herein by this reference.
2. Upon an MCERA member’s retirement, any cash payments made to the member that are conditioned upon the member’s separation from service, i.e., Separation Payments, shall not be included in the member’s compensation earnable calculation for purposes of determining his or her benefit to be received from MCERA.
3. This Resolution shall be effective on the date of its adoption by MCERA’s Board, and shall be applied only to members who retire thereafter. Upon adoption by the Marin County Board of Supervisors under Government Code section 31525, this Resolution shall be made a part of the Regulations of the Board of Retirement.

ADOPTED AND APPROVED by the Board of Retirement of the Marin County Employees’ Retirement Association on the \_\_\_th day of \_\_\_\_\_ 2011.

---

Maya Gladstern, Chair of the Board

Attest:

---

Jeff Wickman, Retirement Administrator

4. Resolution Interpreting “Permanently Incapacitated” Standard (Action)  
Consider and take possible action on Governance Committee’s recommendation to adopt resolution interpreting "permanently incapacitated" standard for purposes of determining eligibility for disability retirement

Committee Chair Brenk said that the Committee determined that a more specific definition of “permanent incapacity” would be beneficial for the disability determination process. The need for such a definition arises from the lack of specified parameters around that term in the ’37 Act.

Based on the action of the Governance Committee, Committee Chair Brenk recommended that the Board adopt the Resolution Interpreting “Permanently Incapacitated” Standard for Purposes of Determining Eligibility for Disability Retirement as submitted. The motion was approved by unanimous vote.

**MARIN COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION  
BOARD OF RETIREMENT RESOLUTION NO. 2011/12-05 INTERPRETING  
“PERMANENTLY INCAPACITATED” STANDARD FOR PURPOSES OF  
DETERMINING ELIGIBILITY FOR DISABILITY RETIREMENT**

WHEREAS, the Marin County Employees’ Retirement Association (“MCERA”) and the MCERA Board of Retirement (“Board”) are governed by the County Employees Retirement Law of 1937 (Gov. Code sections 31450, et seq.) (“CERL”); and

WHEREAS, retirement boards that operate under CERL are required to determine whether a member is “permanently incapacitated physically or mentally for the performance of his [or her] duties in the service” when assessing eligibility for disability retirement (Gov. Code section 31724); and

WHEREAS, the CERL does not define “permanently incapacitated” for purposes of making the determination required by Government Code section 31724; and

WHEREAS, Workers’ Compensation Regulations (8 CA Code Regs. § 10152) define “permanent disability” as follows: “A disability is considered permanent when the employee has reached maximum medical improvement, meaning his or her condition is well stabilized, and unlikely to change substantially in the next year with or without medical treatment,” and the Los

Angeles County Employees' Retirement Association has adopted that regulation for purposes of its determinations under CERL; and

WHEREAS, the Sacramento County Employees' Retirement System (Bylaws, Section 37.y.) defines "permanent" for purposes of permanent incapacity under the CERL as follows: "a condition is expected to continue for such an extended and uncertain duration of time to be considered permanent according to competent medical evidence."

WHEREAS, the Public Employees' Retirement Law that governs the California Public Employees' Retirement System (Gov. Code § 20026), defines "incapacity for performance of duty as a basis of retirement," as "disability of permanent or extended and uncertain duration, as determined by the board."

WHEREAS, the MCERA Board seeks to define "permanent incapacity" in a manner that can be applied consistently to its members, comports with applicable law, and is consistent with its fiduciary duties of loyalty and care to serve the overall best interests of all its members and beneficiaries, and the Board believes this Resolution furthers those purposes; and

NOW, THEREFORE, BE IT RESOLVED that the MCERA Board of Retirement declares the following:

1. The foregoing Recitals are incorporated herein by this reference.
2. For purposes of the MCERA Board's determination of eligibility for disability retirement under the CERL, the Board hereby defines "permanently incapacitated" in Government Code section 31724 as follows: ["the incapacitating condition is expected to continue for such an extended and uncertain duration of time to be considered permanent according to competent medical evidence, and as determined by the Board"].
3. This Resolution shall be effective on the date of its adoption by MCERA's Board, and shall be applied only to members who retire thereafter. Upon adoption by the Marin County Board of Supervisors under Government Code section 31525, this Resolution shall be made a part of the Regulations of the Board of Retirement.

ADOPTED AND APPROVED by the Board of Retirement of the Marin County Employees' Retirement Association on the \_\_\_th day of \_\_\_\_\_ 2011.

\_\_\_\_\_  
Maya Gladstern, Chair of the Board

Attest:

\_\_\_\_\_  
Jeff Wickman, Retirement Administrator

5. Class Action Securities Litigation Policy (Action)

Consider and take possible action on Governance Committee’s recommendation to adopt amendments to Policy

Mr. Wickman stated that revisions to the Class Action Securities Litigation Policy change the threshold loss criteria that will be used to determine whether MCERA should seek lead plaintiff status or determine whether a separate legal action would be appropriate. Trustee Haim discussed the balance between taking a proactive role and the cost of taking such action.

Based on the action of the Governance Committee, Committee Chair Brenk recommended that the Board adopt amendments to the Class Action Securities Litigation Policy as submitted. The motion was approved by unanimous vote.

b. Ad Hoc CPAS Committee Report

1. Project Status Update

Mr. Wickman reported that the October 24 build included all data through October 2011. Results of testing to compare October retirement payroll calculations to CPAS system payroll are good, and include identifiable events that will be resolved. Over the next 30 days, the October payroll data will be confirmed and active payroll data will be verified. Mr. Wickman expressed confidence in the process and expects issues to be manageable. Trustee Haim expressed an interest in an on-site review of the CPAS system operations for the Board, which Mr. Wickman offered to provide in the spring of 2012. Trustee Brenk inquired whether there were any new issues identified with the build and how were the identified fixes going to be addressed. Mr. Wickman said the vendor would script the bulk of the fixes and only one new issue was identified with the build.

Chair Gladstern recessed the meeting at 10:00 A.M., and directed deliberations to **Agenda Item E, Disabilities**, in Closed Session.

Trustee Given joined the meeting in Closed Session at 10:06 A.M.

Chair Gladstern reconvened the meeting in Open Session at 10:31 A.M.

**D. LEGAL MATTERS**

None.

**E. DISABILITIES (TIME CERTAIN: 10 A.M.)**

All disability applications are considered in Closed Session unless applicant specifically waives confidentiality and requests that his or her application be considered in Open Session. (Action)

<u>Applications to be Heard</u>	<u>Service/Non-Service</u>	<u>Date of Application</u>	<u>Employer</u>
---------------------------------	----------------------------	----------------------------	-----------------

1. Kevin Kilpatrick                      Connected                      6/23/10                      Marin County Parks &  
Service    Open Space

Initial consideration of an application for service-connected disability retirement filed by a Miscellaneous member.

It was M/S Given/Brenk to deny Kevin Kilpatrick's initial application for service-connected disability retirement and to provide the applicant with the opportunity to request an administrative hearing in accordance with MCERA policy. The motion was approved by unanimous vote.

3. Trustee Comments

Trustee Haim acknowledged the exceptional capabilities of Helen Moody. Ms. Moody will continue working to transition the staff to the new CPAS system through its implementation in January, 2012.

Trustee Given congratulated the new Board officers and also recommended a review of the process of selecting officers. Ms. Dunning indicated that a review of MCERA's Bylaws in concert with the anticipated Plan Document determination letter may be timely.

Because of the importance of the new Experience Study, Trustee Bolger recommended conducting a preliminary review of the Study at the next Finance and Risk Management Committee meeting. Mr. Wickman agreed that the Committee meeting date may be adjusted to accommodate availability of the Experience Study.

There was discussion about planning for an annual recognition event for MCERA staff after the December Board meeting.

Chair Gladstern noted that there were no applicants for the open Safety positions on the Board. Mr. Wickman is reaching out to plan sponsors and labor groups to communicate the importance of service on the Board.

In anticipation of committee appointments at the December meeting, Chair Gladstern suggested that trustees consider their committee preferences.

**F. OLD BUSINESS**

None.

**G. NEW BUSINESS**

1. Consider and take possible action to approve Board Meeting Calendar for 2012 (Action)  
Chair Gladstern deferred consideration of the Calendar until the December Board meeting.
2. Future Meetings  
Consider and discuss agenda items for future meetings

No discussion.

**H. INVESTMENT INFORMATION**

“X” indicates report distributed; \* indicates report distributed electronically

**PERIODIC REPORTS**

1. Equities and Fixed Income

X	Abbott Capital	-Private Equities Fund	
* X	Artisan Funds, Inc.	-International Equities Fund	
X	The Clifton Group	-Futures Overlay Program	
* X	Columbus Circle Investors	-Small Cap Growth Portfolio	
* X	Dimensional Fund Advisors	-Small Cap Value Fund	
* X	Dodge & Cox	-Large Cap Value Portfolio	
	Eaton Vance	-Emerging Markets	
* X	Morgan Stanley	-International Equities Fund	
X	Pathway Capital	-Private Equities Fund	
* X	Pyramis Global Advisors	-International Small Cap Equity Fund	
* X	RCM	-Large Cap Growth Equities Portfolio	
	State Street Global Advisors	-S&P 500 Flagship Non-Lending	
X	Wellington Management	-Core Domestic Fixed Income Portfolio	
X	Western Asset Management	-Core Plus Domestic Fixed Income Portfolio	

2. Real Estate

	Woodmont Realty Advisors	-Direct ownership – Monthly report	
	AEW Capital Management	-Value Added Portfolio	Quarter
* X	Clarion Partners	-Core	Quarter
* X	RREEF	-Value Added Portfolio	Quarter
	Woodmont Realty Advisors	-Direct Ownership	Quarter

3. Other

**I. OTHER INFORMATION**

1. Trustee Training Calendar

**J. CONSENT CALENDAR (Action)**

It was M/S Haim/McFarland to approve the Consent Calendar as submitted. The motion was approved by unanimous vote.

CONSENT CALENDAR for MCERA MEETING, WEDNESDAY, NOVEMBER 2, 2011 CONSENT CALENDAR October 2011		
RETURN OF CONTRIBUTIONS		
Lawrence Lewis	County of Marin	133.42
Margaret McCaskey	County of Marin	10,052.96

William Tiller	County of Marin	37.47
Fred Vogler	County of Marin	106.54
Lori Coen	City of San Rafael	216.65
Don Ford	Novato Fire	<u>73,416.82</u>
<b>TOTAL</b>		<b>\$83,963.86</b>
<b>BUYBACK</b>		
Maria Quinonez	County of Marin	
Katherine Rael	County of Marin	
<b>NEW RETIREES</b>		
Suzette Burrous	H&HS	County of Marin
Cyndia Cole	H&HS	County of Marin
Linda Dippel	H&HS	County of Marin
Maureen Flynn-Garcia	H&HS	County of Marin
Michael Syroid	H&HS	County of Marin
James Baker	Sheriff	County of Marin
Debra Barry	Sheriff	County of Marin
Carl Mc Cosker	Sheriff	County of Marin
Bruce Stahley	Sheriff	County of Marin
George Shea	Public Defender	County of Marin
Robert Brown		City of San Rafael
Matthew Odetto		City of San Rafael
<b>RESCINDED RETIREMENTS</b>		
<b>DECEASED RETIREES</b>		
Jean Cochran	Probation	County of Marin
Solomon Eason	Assessor's Office	County of Marin
Claudine Harding	County Clerk	County of Marin
Thelma Gingerich	Beneficiary	County of Marin
Jacob Moberg	Beneficiary	County of Marin
Herbert Owen		Southern Marin Fire
<b>CONFERENCES/SEMINARS</b>		
CalAPRS Trustees' Round Table		
Trustee Gladstern		
CalAPRS Accountants' Round Table		
Jackson		
California Retired County Employees Association		
Webb		

There being no further business, Chair Gladstern adjourned the meeting at 11 A.M.

---

Maya Gladstern, Chair

---

Gregory Brenk, Secretary