

MINUTES

**SPECIAL BOARD MEETING
MARIN COUNTY EMPLOYEES' RETIREMENT ASSOCIATION**

**One McInnis Parkway, 1st Floor
Retirement Board Chambers
San Rafael, CA**

December 18, 2012 - 9 A.M.

CALL TO ORDER Chair Bolger called the meeting to order at 9:03 A.M.

ROLL CALL PRESENT: Bolger (early departure), Brenk, Cooper, Given, Gladstern, McFarland, Piombo (safety alternate), Richardson, Shaw (ex officio alternate), Smith, Stevens, Webb (retiree alternate)

ABSENT: None

A. OPEN TIME FOR PUBLIC EXPRESSION

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

See public comments under Agenda Item B.

B. PUBLIC EMPLOYEES' PENSION REFORM ACT OF 2013 (PEPRA)

1. Policies Defining Compensation Earnable and Pensionable Compensation (Action)
Consider and take possible action to adopt policies defining compensation earnable in Gov. Code sec. 31461 under AB 197 and pensionable compensation in Gov. Code sec. 7522.34 under AB 340

Retirement Administrator Jeff Wickman presented a memo outlining the items that needed to be addressed in order to implement the provisions of the Public Employees' Pension Reform Act of 2013 (PEPRA) and Assembly Bill (AB) 197.

Mr. Wickman introduced for the Board's consideration the proposed Policy Regarding Compensation Earnable and Pensionable Compensation Determinations that sets forth "compensation earnable" and "pensionable compensation" based on staff and counsel's recommendations. Counsel Dunning stated that AB 197 clarifies "compensation earnable" under the County Employees Retirement Law of 1937 ("CERL") applicable to current members. PEPRA established definitions for "pensionable compensation" applying to new members hired on or after January 1, 2013. A memo outlining the legal framework leading to the compensation determinations in the proposed policy was presented and reviewed by Ms. Dunning. Policy provisions for each compensation category follow.

Compensation Earnable Under AB 197

Ms. Dunning stated that the draft policy proposes to implement “compensation earnable” provisions prospectively to compensation earned by members on or after January 1, 2013.

Ms. Dunning stated that most of MCERA’s current practices align with AB 197. The draft policy addresses one mandatory exclusion included in AB 197 for payments for additional services rendered outside of normal working hours. A recent published Court of Appeal decision entitled *City of Pleasanton v. Board of Administration, supra*, analyzed “standby” pay and concluded that it constitutes payments for services rendered outside normal working hours. In addition to standby pay, the payments made to MCERA members that also constitute payments for services rendered outside of normal working hours are “on-call” pay, “administrative response pay,” and “call-back” pay. Whether under the Constitution the state legislature has the authority to require these pay items to be excluded from compensation earnable, when some of them previously had been included by MCERA, is an issue that is for the courts to decide, not the retirement board, according to Ms. Dunning.

Discretionary exclusions from compensation earnable under AB 197 are defined as: compensation previously paid by the employer in kind or directly to a third party, even if converted to cash; one-time or ad hoc payments paid to a member but not to all similarly situated members of the member’s grade or class; and payments received as a result of terminating employment. Mr. Wickman noted the policy recommends excluding in-kind conversions from the definitions of compensation earnable under the discretionary authority allowed in the law.

Discussions included Trustee Gladstern’s comments that in-kind conversions to cash in the final average salary period are atypical at MCERA, as there are methods in place to prevent these types of payments. Ms. Gladstern recommended additional research and analysis on discretionary exclusions so that the need to collect retroactive contributions at a later date can be avoided. In response, Ms. Dunning advised that since the legislature has not required the exclusion of in-kind conversions, the Board could reasonably reach either conclusion on whether or not to exclude such items.

In response to Trustee Cooper’s inquiry, Ms. Dunning described the *Salus* case, which supports excluding in-kind conversions. Trustee Piombo commented on compensation items that are contracted for in current Memorandums of Understanding (MOUs). In response to Chair Bolger’s inquiry, staff confirmed there may be a need to collect contributions retroactively if an excluded item were later determined by the courts or subsequent legislation to be includable.

Trustee Given proposed that the Board accept the recommendations of staff regarding compensation earnable under AB 197 as the best option to protect the Fund in accordance with the law.

Mary Ruth Gross, Executive Director of the Marin Association of Public Employees (MAPE), stated that MAPE has concerns about the impairment of vested rights if in-kind conversions are excluded as described in the policy. Characterizing the proposed policy as too broad, she questioned whether there is sufficient information to assume a payment is accepted in order to spike a pension benefit.

It was M/S Brenk/Given to adopt, as to AB 197 provisions, the Policy Regarding Compensation Earnable and Pensionable Compensation Determinations as presented. The motion was approved by a vote of 7-2 as follows:

AYES: Bolger, Brenk, Cooper, Given, Richardson, Smith, Stevens

NOES: Gladstern, McFarland

ABSTAIN: None

ABSENT: None

Pensionable Compensation Under PEPR

Pensionable Compensation is applicable to new MCERA members for compensation earned on or after January 1, 2013. The statute defines pensionable compensation as “the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.”

Mr. Wickman stated that the policy was drafted to exclude certain special compensation items unless they meet the criteria included in the definition of pensionable compensation. In response to Trustee Gladstern’s inquiry, Ms. Dunning explained that the hearings procedure is an appropriate avenue for matters regarding positions with no similarly situated employees. Trustee Piombo discussed specialty pay and post-certificate pay in the City of San Rafael MOUs.

Chair Bolger was excused from the meeting at 10:21 A.M. Vice Chair Brenk proceeded as Acting Chair.

Jon Elam, Tamalpais Community Services District General Manager, inquired about incentive pay and certifications required by plant operators. In response Ms. Dunning reviewed pay types that would be included, such as merit increases. Mr. Elam was also referred by Mr. Wickman to the compensation standards set forth in the proposed policy.

John Grey, counsel for a local firefighters union, sought clarification on holiday pay and skills-based pay. In response, Ms. Dunning explained the circumstances under which such items may be included in “pensionable compensation,” noting that included items need to be consistent with the requirements of subdivision (a) of section 7522.34.

According to Trustee Gladstern, bilingual pay is an example of likely challenges to exclusions from base pay.

It was M/S Given/Richardson to adopt the remainder of the Policy Regarding Compensation Earnable and Pensionable Compensation Determinations as presented. The motion was approved by unanimous vote as follows:

AYES: Brenk, Cooper, Given, Gladstern, McFarland, Richardson, Smith, Stevens

NOES: None

ABSTAIN: None

ABSENT: Bolger

Acting Chair Brenk recessed the meeting for a break at 10:41 A.M., reconvening at 10:50 A.M.

2. Employer and Employee Contribution Rates (Action)

Consider and take possible action to determine safety and nonsafety contribution rates for new members and their employers under Gov. Code sec. 7522.30

Actuary Graham Schmidt of EFI Actuaries presented recommended contribution rates for new PEPRA members and their employers for the Board's consideration. The contribution rates are based on the normal cost calculation according to new funding and benefits. These include the requirement that employees pay one half of the normal cost, with rounding of members' rates as provided by the new law. Member data is from the Actuarial Valuation of the Plan as of June 30, 2011. The recommended contribution rates are:

- 2% maximum COLA: New General Members, 8.25%; employers, 8.40%.
- 2% maximum COLA: New Safety Members, 12.50%; employers, 12.42%.
- 4% maximum COLA: New General Members, 9.25%; employers, 9.27%.
- 4% maximum COLA: New Safety Members, 14.75%, employers, 14.77%.

Three key elements of the PEPRA contribution rates, within the General and Safety classifications, are:

1. The rates are based on data only for members hired in the past ten years.
2. The rates are pooled, reflecting the costs of the required tiers only differentiated by the COLA benefit.
3. The employee rates are uniform for the tiers instead of age at entry.

Mr. Schmidt discussed the use of member demographics for the past ten years, noting the increased average age of new employees that is consistent with experiences in other public retirement systems. In addition, an analysis shows minimal differences in normal cost calculations across all plans, so that pooling contribution rates is a reasonable

approach. Pooled rates have the advantage of substantially reduced volatility for smaller employers and ease of administration, he said.

Trustee Piombo commented that younger employees may be at a disadvantage if age at entry is no longer considered. In response, Mr. Wickman observed that young employees do not necessarily remain in the system for an entire career, and secondly, uniform rates are the standard across the United States. Moreover, as Ms. Dunning advised, under PEPRA and the CERL, the Board has the authority to implement a uniform rate for new hires based on the advice of the actuary. Although legislative clarification is being sought, Ms. Dunning believes that even without the legislation, it would be reasonable to use either age at entry or uniform rates for new members subject to PEPRA.

It was M/S Given/Gladstern to adopt safety and non-safety contribution rates for new members and their employers under Gov. Code sec. 7522.30, as presented by the actuary.

Trustee Webb expressed his concern that pooled rates may put bargaining groups with younger members who retire earlier at a disadvantage, and he requested additional actuarial information on this topic.

The motion was approved by unanimous vote as follows:

AYES: Brenk, Cooper, Given, Gladstern, McFarland, Richardson, Smith, Stevens

NOES: None

ABSTAIN: None

ABSENT: Bolger

There being no further business, Acting Chair Brenk adjourned the meeting at 11:24 A.M.

Gregory Brenk, Vice Chair

Howard McFarland, Secretary