



ITEM 9

Executive Staff

Richard Stensrud
Chief Executive Officer

Steve Davis
Chief Investment Officer

Robert L. Gaumer
General Counsel

Kathryn T. Regalia
Chief Operations Officer

John W. Gobel, Sr.
Chief Benefits Officer

For Agenda of:
December 21, 2016

December 16, 2016

TO: President and Members
Board of Retirement

FROM: Robert L. Gaumer
General Counsel

SUBJECT: Adoption of Resolution Regarding Approval of Amendments to SCERS Bylaws and Request to Sacramento County Board of Supervisors to Implement the Same.

Recommendation:

That the Board adopt a resolution regarding SCERS Bylaws amendments and request that the Sacramento County Board of Supervisors implement the same.

Background:

As the Board will recall, in January 2016, the Board adopted new Disability Retirement Procedures (DRPs) which were drafted in an effort to improve the disability retirement process by increasing efficiency and reducing determination time and expenses. To affect these changes, in March 2016, the Board approved several amendments to its Bylaws, including the extraction of the current disability rules that govern disability retirement process from the SCERS Bylaws, replacing them with the (DRPs) which will exist independently of the Bylaws. In October 2016, SCERS asked the Sacramento Board of Supervisors (BOS) to approve the Board adopted Bylaw amendments. As explained below, to date the County has not acted on the Board's request.

Discussion:

In order for the adopted Bylaw amendments to become operational, California Government Code Section 31525 states that they must be approved by the BOS. After adopting the DRPs and amending the Bylaws, SCERS submitted a resolution to be placed on the

November 1, 2016, BOS agenda for approval (Agenda Item). A copy of the Agenda Item (without the accompanying exhibits) is attached as Exhibit A. Shortly before the November 1, 2016, BOS meeting SCERS was informed that the Agenda Item had been removed from the BOS agenda. SCERS was further informed that the Agenda Item was being reviewed "by the seventh floor" and had not been removed for legal reasons. SCERS was informed that the Agenda Item would likely be placed on the November 15, 2016.

On or about November 16, 2016, SCERS inquired as to the status of the Agenda Item. SCERS was informed that there had been no movement regarding the Agenda Item. Due to the inaction, SCERS submitted a second request on or about November 29, 2016 (Agenda Item 2) that the Bylaw amendments be placed on the January 3, 2017 BOS agenda. Staff would like to add a resolution to Agenda Item 2 that clearly points out that SCERS has performed the prerequisites to BOS approval and again ask for that approval.

The Board adopted the proposed Bylaw amendments at the March 2016 Board meeting as part of the Consent Calendar. The Board's action, noted in the approved Board minutes, was brought to the attention of the County in the Agenda Item. While SCERS believes that it has met all the legal requirements needed for the BOS to approve the proposed amendments, Staff would like to buttress Agenda Item 2 with the specifically worded resolution asking for the BOS' approval as well as setting forth the basis for the Board's request.

The BOS' role in approving Bylaw amendments is purely a ministerial action. Any refusal to act on the Agenda Items cannot be unreasonable. A ministerial action is an act that is done after ascertaining the existence of certain facts and is performed without exercise of personal judgment or discretion. Government Code section 31525 states that the Board can make Bylaws and they become effective upon approval by the BOS. The only fact that SCERS must demonstrate to the BOS is that the Bylaws were adopted by the Board. That was done in the Agenda Item, but Staff would like to do so more patently in Agenda Item 2. Thus, Agenda Item 2 will include a specific resolution that will make it, in SCERS' opinion, obvious that refusal to act would be unreasonable.

CONCLUSION

SCERS trusts that inclusion of the attached resolution (included with this memorandum as Exhibit B) will persuade the County to act on Agenda Item 2. Therefore, Staff requests that the Board adopt the attached resolution and request that the BOS approve this Board's wishes that the SCERS Bylaws be amended.

Respectfully submitted,

Concur:

Robert L. Gaumer
General Counsel

Richard Stensrud
Chief Executive Officer

Attachments

**COUNTY OF SACRAMENTO
CALIFORNIA**

For the Agenda of:
November 1, 2016

To: Board of Supervisors

From: The Sacramento County Employees' Retirement System (SCERS)

Subject: Approval of Amendments to SCERS Bylaws

Supervisory
District(s): All

Contact: Richard Stensrud, SCERS Chief Executive Officer, (916) 874-2486

Overview

California Government Code Section 31525 states that regulations and bylaws adopted by the Board of Retirement become effective upon approval by the Board of Supervisors. In January 2016, the Board of Retirement adopted new Disability Retirement Procedures which were drafted in an effort to improve the disability retirement benefit determination process, by increasing efficiency, reducing determination time and reducing expenses. In February 2016, the Board of Retirement approved several amendments to its Bylaws, including extraction of the current disability rules that govern the application process from the Bylaws, and replacing them with the free-standing set of Disability Retirement Procedures. The Board of Retirement now seeks approval of the Bylaw amendments by the Board of Supervisors

Recommendations

Approve the Bylaw Amendments adopted by the Board of Retirement and attached as Attachment 1 to assist the Board of Retirement in improving its disability retirement benefit determination process.

Fiscal Impact

There is no fiscal impact.

BACKGROUND/DISCUSSION

Removal of Disability Retirement Benefit Determination Rules from Bylaws.

Historically, the process for making disability retirement benefit determinations has been a part of the SCERS Bylaws. In 2007, SCERS revised the process it utilizes in evaluating and making determinations regarding disability retirement benefit applications. As part of the revision, SCERS amended its Bylaws and added an entirely new section, Chapter 5, which included the codification of 96 rules devoted to the administration of the disability retirement benefit application process. Pursuant to Government Code Section 31525, the modified Bylaws were submitted to and approved by your Board. Since 2007, Chapter 5 of the SCERS Bylaws has housed the rules that govern the SCERS disability benefit determination process. A copy of Chapter 5 of the current Bylaws is included as Attachment 2

The disability retirement benefit determination process includes, but is not limited to, member counseling, application evaluation, independent medical examination, administrative hearings and benefit calculation. Whether a SCERS member qualifies for a disability retirement benefit substantially centers on the medical evidence. The Applicant is required to submit the pertinent medical evidence (typically in the form of reports, records or statements from the Applicant's treating or consulting medical professionals) as part of his/her application. SCERS reviews the medical records to determine whether all the required information has been submitted in order to constitute a completed application, and whether those medical records sufficiently establish that the Applicant qualifies for a disability retirement benefit. If the answer to the latter question is yes, the application moves to the SCERS Board for approval. If the answer to the latter question is unclear, or if the medical evidence does not establish the applicant qualified, the applicant is sent for an examination by an independent medical examiner (IME). Depending on the outcome of the IME report, the application either goes to the SCERS Board for approval or is referred for an administrative hearing where the hearing officer weighs the evidence, reaches conclusions and recommends a proposed disposition. The conclusions and recommendations of the hearing officer are then presented for consideration by the SCERS Board.

Over the past ten years, the disability retirement benefit evaluation and determination process has become the single most expensive retirement benefit for SCERS to administer. Because the current disability determination rules do not provide for an early stage denial of an application, failure of an Applicant to meet the requisite burden of proof means the Applicant must undergo an IME, typically followed by an administrative hearing. In the past few years, more cases have required in-person independent medical examinations; more cases have been referred to administrative hearings; and service provider expenses associated with these activities have increased.

SCERS has developed a new set of Disability Retirement Procedures (DRPs) designed to address the two main objectives of evaluating disability retirement benefit applications: (1) Reaching the correct conclusion – i.e., seeking to assure that Applicants who qualify for a disability retirement benefit receive that benefit and Applicants who do not qualify do not receive the benefit; and (2) Making that determination in an efficient and timely manner. SCERS believes the new DRPs will assist both the applicant and SCERS by providing the clarity and detail needed to inform Applicants of the rules, standards and requirements of a successful disability application and providing SCERS with the tools necessary to efficiently administer the process. The Retirement Board will continue to make the final decision regarding whether a disability retirement benefit should be granted and Applicants will continue to have the right to present their case to the Retirement Board if they so choose.

In January 2016, the Board of Retirement adopted the new DRPs. A copy of the adopted DRPs is included at Attachment 3. Prior to adoption, SCERS presented the DRPs to and received comments from the Deputy County Counsel that handles SCERS' disability hearings and the Sacramento County Department of Personnel Services. Each endorsed the proposed procedures. SCERS also sent copies to the Sacramento County Sheriff's Department and representatives of the Deputy Sheriff's Association asking for comment, none was received.

Because the DRPs are drafted with more detail than the current disability application processing rules, SCERS believes that they are no longer suitable for the organization's Bylaws. Bylaws provide a general framework for the organization and typically provide authority for the organization to promulgate detailed policies and procedures that govern the day-to-day operations. The DRPs approved by the Board of Retirement represent such detailed day-to-day procedures. Accordingly, in February 2016, the Board of Retirement approved revisions to the SCERS Bylaws that included, among other things, the removal of the disability determination rules from Chapter 5 of the Bylaws. The Board of Retirement believes that the disability retirement determination process would be better served with the DRPs as a standalone document that does not require two board presentations to amend to address possible changes in the future. For convenience, a red-lined copy of the current Bylaws highlighting the amendments is included as Attachment 4.

SCERS acknowledges that even with the adoption of the DRPs, the evolution of the disability determination process will continue. It is SCERS' goal to take whatever steps are necessary to make the disability process as efficient and understandable as possible. SCERS believes that disability determination rules that exist outside the organization's bylaws provides increased flexibility to enable SCERS adapt and make changes in a more expedited manner.

Amendments to Modernize the Bylaws and Comply with PEPRA Changes

While extraction of the disability retirement determination rules from the Bylaws represents the bulk of the proposed amendments, SCERS has identified several minor, technical changes that should also be made to the existing Bylaws. A redlined version of the proposed changes is enclosed as Attachment 4. Explanation of the proposed technical changes follows.

Secs.1.1, 1.2 and 1.3

These sections contain references to a "retirement association" that is outmoded and a term that is no longer used. The proposed language modernizes the terminology.

Sec. 5

Section 5 currently provides for a temporary Retirement Administrator and Board Secretary assignment which is no longer applicable. The proposed language provides for the appointment of a Chief Executive Officer and his/her assignment as the Secretary of the Board.

Sec. 14

Section 14 provides for the creation of committees (Retiree, Legislative, Administrative, Investment and Ad Hoc). SCERS does not operate under the noted committee structure and has not for many years. Therefore the reference to Retirees, Legislative, Administrative and Investment committees is not reflective of how SCERS operates. Accordingly, reference to these committees has been removed. It is appropriate to have Bylaws that provide for the establishment of a committee should the Retirement Board decide one is necessary. Section 14 proposes to provide for the creation of committees on a desired and as needed basis.

Sec. 16

The first change is stylistic. The removal of the reference to 70 year-old employees recognizes the difference between membership and employment. The employment relationship is established by the employer. There is no need to have a reference to the employment relationship of 70 year-old members in SCERS Bylaws.

Sec. 17

The definition for “Hourly Pay” is outdated and fails to recognize that not all members work 8 hour days and 80 hour pay periods. The replacement definition for “Regular Pay” is more general and incorporates specialized schedules (i.e. 7-12 schedules – where members work seven (7), twelve (12) hour shifts in a pay period).

Sec. 20

The Bylaws were amended to incorporate the current definition of compensation earnable after the *Ventura* cases (1993). It is a good definition based upon that case law. However, with the implementation of the Public Employees Pension Reform Act (PEPRA) and the concept of pensionable compensation introduced with the legislation, a more general definition that encompasses both compensation earnable and pensionable compensation is preferable.

Sec. 29

Mandatory retirement age is an outdated concept. There is nothing currently in the CERL that speaks to or specifies a mandatory retirement age. Section 31671 was recently amended and updated to include the latest Internal Revenue Service (IRS) requirements for compensation limits governed by Internal Revenue Code (IRC) §401(a)(17) and Title 26 of the United States Code.

FINANCIAL ANALYSIS

Adopting the proposed Bylaws amendments will have no fiscal impact upon the County of Sacramento or the General Fund.

Respectfully Submitted,

APPROVED:
NAV GILL
County Executive

RICHARD STENSRUD
Chief Executive Officer
Sacramento County Employees'
Retirement System (SCERS)

By: _____
DAVID VILLANUEVA
Chief Deputy County Executive

Attachments:

- (1) Proposed SCERS Bylaws amendments
- (2) Chapter 5 of SCERS Bylaws (current disability rules)
- (3) SCERS DRPs Adopted by Board of Retirement
- (4) Redline version of proposed Bylaws amendments

RESOLUTION NO. SCERS 2016-09

**RESOLUTION OF THE BOARD OF RETIREMENT
OF THE SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM
TO ADOPT SCERS BYLAWS AMENDMENTS**

WHEREAS, The California Constitution at Article XVI, section 17 provides that the Board of Retirement of a public pension system shall have the sole and exclusive responsibility to administer the system in a manner that will assure prompt delivery of benefits and related services to the participants and their beneficiaries. and,

WHEREAS, the Board of Retirement is authorized to make and amend Bylaws that guide the system's administration and request approval of the Bylaws by the Board of Supervisors; and,

WHEREAS, in March 2016 the Sacramento County Employees' Retirement System Board of Retirement, in a publically noticed meeting, took action to amended several of its Bylaws; and

WHEREAS, in October 2016 the Sacramento County Employees' Retirement System submitted its first request to the Sacramento County Board of Supervisors for approval of the March 2016 Bylaw amendments; and,

WHEREAS, to date, the Sacramento County Board of Supervisors the Board has not acted on the Sacramento County Employees' Retirement System Board of Retirement's request; and

WHEREAS, the Sacramento County Employees' Retirement System has submitted a second request to the Sacramento County Board of Supervisors to be accompanied by this resolution requesting approval of the March 2016 Bylaw amendments.

THEREFORE, BE IT RESOLVED AND ORDERED that this Board formally adopts and reaffirms the amendments to its Bylaws presented to this Board at its publically noticed meeting in March 2016 and formally requests that the Sacramento County Board of Supervisors approve these same Bylaw amendments.

On motion made by Member _____, Seconded by Member _____, the foregoing Resolution was passed and adopted by the Board of the Sacramento County Employees' Retirement System this 21th day of December, 2016, by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

President of the Board of the
Sacramento County Employees'
Retirement System

ATTEST: _____
Secretary of the Board of the
Sacramento County Employees'
Retirement System