

AGENDA ITEM

703 December 12, 2013

DATE: December 12, 2013

TO: Members, Board of Trustees

FROM: Robert A. Hawley, Deputy Executive Director

SUBJECT: CalPERS Resolution Employer Paid Member Contributions

EXECUTIVE SUMMARY

The Board is requested here to adopt a resolution altering the previous Board action authorizing State Bar payment to CalPERS of Employer Paid Member Contributions (EPMC). As explained in the companion Board action items before the Board at this special meeting, to conform to the Public Employee Pension Reform Act (PEPRA), the State Bar negotiated with the Union the shift of employee contributions to CalPERS from the State Bar to employees. The Board is requested to ratify this Union contract provision and to conform Executive Staff and Confidential Employees to the same standard. This item seeks to formalize the State Bar's action on EPMC for CalPERS's purposes. IF YOU HAVE SUBSTANTIVE QUESTIONS, PLEASE CONTACT ROBERT HAWLEY 415-538-2277 or Robert.Hawley@calbar.ca.gov.

BACKGROUND

In 2004-2005-2006, following Union negotiations and Board action, the State Bar assumed payment of the employee contribution to CalPERS retirement in approximately 2% increments totaling 7% of salary over the 3 year period. The State Bar's undertaking of Employer Paid Member Contributions (EPMC) to CalPERS was formalized by Board action ratifying the Union Memorandum of Understanding, as well as conforming the Rules & Regulations Pertaining to the Employment of Executive Staff and the Rules & Regulations Pertaining to the Employment of Confidential Employees, and sought to treat all State Bar employees equally regarding CalPERS retirement contributions.

In 2013, the Legislature passed, at the behest of the Governor, the Public Employee Pension Reform Act (PEPRA), which mandates that Employer Paid Member Contributions be shifted back to employees as a wage deduction. This was to be effective in January 2013, unless a Union agreement was in place. This was the case at the State Bar, giving us until January 2014 to comply.

As part of the recently concluded Union negotiations, MOU amendments for 2014 are before the Board at this special meeting for ratification. These amendments include the shift of EPMC back to employees as a 7% wage deduction. Also before the Board are conforming amendments to the Executive Staff and Confidential Employee Rules to treat all employees at the State Bar the same.

The State Bar of California is a contract participant in the CalPERS system. As a result, the terms and conditions that govern the State Bar's participation in CalPERS are governed, not by statute, but by a contract. Public entities like cities, counties and special districts that are not fully integrated state entities are treated in this matter. PEPRA extended its reach to these non-statutory CalPERS participants.

CalPERS requires that the governing body of contract entities formally adopt material changes in the terms governing employee retirement. As a result, before the Board at this special meeting is a proposed resolution by the Board of Trustees, the State Bar's governing body, to end payment of EPMC for employees.

One exception is noted. The State Bar will continue to pay EPMC for State Bar Court Judges. Hearing and Review Department State Bar Court Judges serve pursuant to statute. [See, Business & Professions Code Sections 6079.1, 6086.5, 6086.65.] State Bar Court Judges are appointees, serving a term, and are not State Bar employees. The salaries for State Bar Court Judges are set by statute. [See, Business & Professions Code Sections 6079.1(d), 6086.65(a).] Benefits and other terms and conditions of employment are set by the State Bar. [See, Business & Professions Code Sections 6079.1(d)]. The non-salary benefits for State Bar Court Judges are reflected in Rules & Regulations Governing State Bar Court Service, adopted by the Board.

Under these rules, the State Bar has paid EPMC for State Bar Court Judges as with State Bar Executive Staff. The negotiated change with the Union and the conforming changes to Executive Staff and Confidential Employee rules results in a 7% salary deduction to employees. However, because the initial payment of EPMC was in lieu of salary adjustments in 2004-2006, the State Bar is "back-filling" that shift with salary, increasing employee salary ranges 7%.

Because State Bar Court Judge salaries cannot be adjusted without a statutory amendment, the shift of a 7% salary deduction to judges would reduce their salary by 7%, an unintended consequence. Thus, the Board action proposed here excepts State Bar Court Judges from the shift to employees of member contributions.

PEPRA allows for EPMC to be paid for pre-existing CalPERS members. As a result, an exception is made in the proposed resolution to continue paying EPMC for statutorily defined judges. The purpose of this is to avoid a reduction in their net salary until a broad based resolution can be developed.

ISSUE

Should the Board of Trustees adopt the resolution to change Employer Paid Member Contributions to the California Public Employees Retirement System in the form attached.

CONCLUSION

Staff recommends that the resolution be adopted.

DISCUSSION

See the discussion set forth in the Background above.

FISCAL / PERSONNEL IMPACT:

The fiscal impact is within budget. The personnel impact is discussed above and in the other items before the Board this date.

RULE AMENDMENTS:

None.

BOARD BOOK IMPACT:

None.

RECOMMENDATION

It is recommended that the Board of Trustees adopt the resolution to change Employer Paid Member Contributions to the California Public Employee Retirement System in the form attached hereto.

PROPOSED BOARD OF TRUSTEES RESOLUTION:

Should the Board concur with the staff's recommendation, the following resolution is in order:

RESOLVED, that the Board of Trustees adopts the resolution to change Employer Paid Member Contributions to the California Public Employees Retirement System in the form attached and discussed with the Board this date; and it is

FURTHER RESOLVED, that the Board directs staff to finalize the Board resolution and forward it to CalPERS; and it is

FURTHER RESOLVED, that the resolution is adopted in principle, subject to nonmaterial changes that may need to be made in submitting this resolution to CalPERS; and it is

FURTHER RESOLVED, that any changes to the resolution shall be approved by the State Bar Executive Director, Office of General Counsel and Office of Human Resources.