



The State Bar *of California*

OPEN SESSION

AGENDA ITEM

701 NOVEMBER 2019

FINANCE COMMITTEE III.D

DATE: November 6, 2019

TO: Members, Finance Committee
Members, Board of Trustees

FROM: Leah T. Wilson, Executive Director
John Adams, Chief Financial Officer

SUBJECT: Authority to Extend Retiree Health Benefits and Modify Eligibility
Requirements

EXECUTIVE SUMMARY

This agenda item requests that the Board of Trustees formally approve extending retiree health benefits to unrepresented non-executive employees as funded by this year's annual licensing fee legislation, SB 176 (Stats. 2019, ch. 698), by amending the State Bar of California Post-Retirement Welfare Benefits Plan and approving signature authority for the purpose of withdrawing assets to make benefit payments from the California Employers' Retiree Benefit Trust managed by CalPERS.

Adoption of Post-Retirement Welfare Benefits Plan

In July 2008, the State Bar of California established a Post-Retirement Welfare Benefits Plan for Executive Staff Employees (Plan). The Plan provides post-retirement medical and vision benefits¹ to executive staff employed as of August 2006 and requires 15 years of service at the State Bar as a regular executive employee to be eligible for benefits. For employees who became executive staff after August 2006, eligibility requires 15 years of service to the State Bar as a regular employee, with at least the last ten years of service preceding retirement as an executive staff employee. The employee must also elect to receive retirement benefits under

¹ Dental benefits are not provided for retirees.

CalPERS effective within 120 days of retirement from State Bar employment in order to be eligible for the Plan.

Establishment of OPEB Trust

In December 2008, the State Bar created an irrevocable trust for the Post-Retirement Welfare Benefits Plan, also known as an Other Post-Employment Benefits Trust (OPEB Trust) to set aside assets to fund the cost of retiree health care benefits for eligible executive employees. In 2012 and 2013, the State Bar transferred funds from the OPEB Trust to a higher-yielding trust managed by CalPERS called the California Employers' Retiree Benefit Trust (CERBT). Annually, the State Bar makes contributions to CERBT to pay its Actuarially Determined Contribution (ADC), as determined by the State Bar's actuary.

Major Changes in 2018

In February 2018, the Board of Trustees authorized the State Bar's transition of its active employee and retiree health and welfare benefit plans to CalPERS under the California Public Employees' Medical & Hospital Care Act (PEMHCA). The effective date of the State Bar's transition to CalPERS was May 1, 2018. Under PEMHCA, the State Bar is statutorily required to provide a monthly minimum retiree contribution, currently \$136, for every employee who retires from the State Bar within 120 days of separation and elects a CalPERS Health Plan.

With the transition to CalPERS Health in May 2018, the State Bar approved an Amended and Restated State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees, effective May 1, 2018 (Restated Plan). In addition to extending post-employment benefits to all non-executive staff, it changed the benefit for executive staff hired or promoted on or after January 1, 2018 to set the maximum amount contributed at 80, as opposed to 100, percent. The table below shows the current retiree health benefits provided by the State Bar:

Group Description	Years of State Bar Service	Benefit during Retiree's Lifetime Paid by State Bar	Surviving Spouse Benefit after Retiree Death Paid by State Bar
Executive employees hired before 1/1/18	15+	100% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
Executive employees hired or promoted on/after 1/1/18	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
All non-Executive employees	N/A	PEMHCA Minimum	PEMHCA Minimum

As shown above, the State Bar pays the full cost of retiree health coverage for executive employees hired before January 1, 2018. For executive employees hired or promoted on or after January 1, 2018, the State Bar pays 80 percent of the cost of the premium for the plan. For non-executive employees retiring with a CalPERS pension and enrolled in a CalPERS Health Plan, the State Bar is required to pay the statutory minimum (\$136 per month for 2019) and the retiree would be required to pay the difference in plan premium. In addition, the State Bar pays 100 percent of the monthly vision plan premiums for executives who are eligible for the vision

coverage in the amount of \$15.40, \$22.34, and \$40.06 for retiree, couple, and family, respectively.

Positive Financial Impacts

With the transition to CalPERS Health and the benefit changes made to the Plan, the State Bar realized significant annual savings of approximately \$1 million in ongoing health premium contributions, in addition to reducing its long term liability by \$9.7 million from \$27.1 million as of June 30, 2017 to \$17.4 million as of June 30, 2018. The change in benefit terms resulted in a reduction of the liability of \$10.3 million or 38 percent, based on the most recent actuarial report. Prior to the change, the State Bar had a \$3.5 million OPEB Liability and after the change has an \$8.0 million OPEB Asset. The Trust is 145.9 percent funded as of December 31, 2018.

	For the Fiscal Year Ending	
	December 31, 2018	December 31, 2017
Total OPEB Liability	\$ 17,422,595	\$ 27,065,763
Fiduciary Net Position	<u>25,426,964</u>	<u>23,577,193</u>
Net OPEB Liability	\$ (8,004,369)	\$ 3,488,570
Fiduciary Net Position as a % of Total OPEB Liability	145.9%	87.1%

DISCUSSION

Providing Fair & Equitable Retiree Health

The changes made in 2018 provided the opportunity for the State Bar to consider providing equitable retiree health benefits to all employees. The proposal, which was included in the methodology used to advocate for a 2020 license fee increase and which has been funded by that now approved increase, is that the State Bar would offer the same benefits as provided for executive employees hired or promoted on or after January 1, 2018, to all nonexecutive employees with service on or after January 1, 2020. Doing so would not only provide a reasonable and retiree health benefit to all staff, but would also be comparable to retiree health benefits provided to other state employees in the executive and judicial branches. The present agenda items seeks approval only as related to the extension of retiree health benefits to confidential employees as the State Bar is currently in negotiations with its represented units regarding a similar extension for this population. Recommended Plan modifications also include recognizing prior CalPERS service for all employees who retire on January 1, 2020, or after. An Amended and Restated Plan reflecting these changes will be brought back to the Board in 2020.

Five Year Forecast

In May 2018, the State Bar had its actuary prepare an analysis to determine the additional costs of extending to all non-executives retirees the health benefits provided to executive retirees. That analysis showed that the increase in costs would be approximately \$3.5 million per year. This information was the basis of projecting future costs for providing retiree health care benefits in the Five Year Forecast (Forecast) that was prepared in October 2018. The Forecast

projected the revenues and expenses of the General Fund for Fiscal Years 2020 to 2024 and was the basis of the State Bar's request for a fee increase for 2020.

California State Auditor Review

In April 2019, the California State Auditor issued Audit Report 2018-030 that supported extending retiree health benefits to all employees and recommended that \$3.2 million annually be funded by a \$17 increase in the 2020 annual licensing fee.

SB 176 Approved Retiree Health Funding

Based on the recommendation of the State Auditor, the Assembly Judiciary Committee (Committee) on July 9, 2019, passed an amended version of Senate Bill 176 that included a significant increase to the annual licensing fee for 2020. In the analysis, the Committee recommended that the active fee should be increased by \$17 to support retiree health benefits for the State Bar. On October 9, 2019, the Governor signed SB 176 (Stats. 2019, ch. 698), the first increase in the annual fee in over 20 years. With the approval of the State Bar's annual licensing fee legislation, the funds are now available to support providing equitable retiree health benefits to all employees.

Amending Plan Effective January 2020

With funding to support retiree health benefits, staff has prepared a Resolution (Attachment A) to amend the current Post-Retirement Welfare Benefits Plan. The key elements of the amendment are:

1. Plan Name Change – The new name is "State Bar of California Post-Retirement Welfare Benefits Plan."
2. Adds Confidential Employees – This amendment, for now, extends the benefit only to unrepresented nonexecutive employees (i.e., Confidential employees) who retire on or after January 1, 2020.
3. Years of Service – Defines years of service for eligibility as total service credit as calculated by CalPERS, which recognizes prior public service with any CalPERS covered agency.
4. Eligibility Requirements – Revises the eligibility requirements to become a participant covered in the plan.
5. Benefit Limitation – Provides clarification on benefits received by each Group as shown below.

Group Description	Years of CalPERS Service	Benefit during Retiree's Lifetime Paid by State Bar	Surviving Spouse Benefit after Retiree Death Paid by State Bar
Executive employees hired before 1/1/18	15+	100% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
Executive employees hired or promoted on/after 1/1/18	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
All non-Executive employees	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum

CalPERS Delegation of Authority Resolution

In addition to the resolution to amend the Plan, staff requests that the Board adopt a Resolution (Attachment B) required by CalPERS to request disbursements from the Trust to make benefit payments to retirees. The resolution delegates authority to the Executive Director, the Chief Administrative Officer or the Chief Financial Officer to request reimbursements from CalPERS to make benefit payments. Payments to beneficiaries are currently managed and made by the State Bar on a monthly basis.

FISCAL/PERSONNEL IMPACT

With the approval of the 2020 Fee Bill, the State Bar will have approximately \$3.4 million in General Fund to support expanding retiree health benefits to all employees. On November 6, 2019, the actuary completed an analysis (Attachment D) using census data from the most current actuarial report showing an estimated annual cost of \$3.7 million to extend similar retiree health benefits to all non-executive employees based on the proposed amendment to the Plan. The cost associated with providing the benefit to unrepresented (Confidential) non-executive employees is estimated to be \$129,000 annually and adds \$1.246 million to the liability. If all full time employees were eligible, the annual actuarial determined contribution would be \$3.687 million annually. Of the estimated \$3.7 million annually, approximately 80 percent of those costs will be funded from the licensing fee increase; the balance will be distributed to other funds pursuant to the State Bar's cost allocation policy.

RULE AMENDMENTS

None

BOARD OF TRUSTEES POLICY MANUAL AMENDMENTS

None

STRATEGIC PLAN GOALS & OBJECTIVES

Goal 3: Improve the fiscal and operational management of the State Bar, emphasizing integrity, transparency, accountability, and excellence.

RECOMMENDATIONS

It is recommended that the Board of Trustees approve the following resolutions:

RESOLVED, that the Board of Trustees approves Resolution #1, Amendment to the State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees, as contained in Attachment A; and it is

FURTHER RESOLVED, that the Board of Trustees approves Resolution #2, Delegation of Authority to Request Disbursements, as contained in Attachment B.

ATTACHMENT(S) LIST

- A.** Resolution #1 – Amendment to the State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees
- B.** Resolution #2 – Delegation of Authority to Request Disbursements
- C.** Amended and Restated State Bar of California Post-Retirement Welfare Benefits Plan for Executive Staff Employees, effective May 1, 2018
- D.** November 5, 2019 Actuarial Analysis Report

**AMENDMENT TO THE
STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN
FOR EXECUTIVE STAFF EMPLOYEES**

This Amendment to the State Bar Of California Post-Retirement Welfare Benefits Plan For Executive Staff Employees (Plan) is adopted by the State Bar Of California (Employer), to be effective as of January 1, 2020.

RECITALS

Whereas:

- A. The Employer provides post-retirement medical benefits to its eligible executive staff employees pursuant to the Plan as originally adopted effective as of July 11, 2008 and as most recently amended as of May 1, 2018.
- B. In enacting the most recent fee legislation for attorneys in the State of California, the Legislature determined that the Employer should expand the provision of post-retirement medical benefits to other employees of the Employer.
- C. The Employer has determined that it is appropriate at this time to amend the Plan in order to provide post-retirement medical benefits to the confidential employees of the Employer whose employment is not governed by a collective bargaining agreement.

OPERATIVE PROVISIONS

Now, therefore, the Plan shall be amended as follows, effective as of January 1, 2020:

- 1. Section 1.01, "Plan Name," is amended and restated to read as follows:

1.01. *Plan Name.*

The name of this Plan is the "State Bar Of California Post-Retirement Welfare Benefits Plan."

2. Article 2, "General Definitions," is amended by adding new section 2.04, "Confidential Employee," to read as follows and by renumbering the remaining sections accordingly:

2.04. Confidential Employee.

"Confidential Employee" means an Employee whose employment immediately before he or she terminates employment with the Employer is not governed by the terms of a collective bargaining agreement between Employee representatives (within the meaning of Code section 7701(a)(46)) and the Employer and who is not an Executive Staff Employee at that time. An individual's status as a "Confidential Employee" will be determined solely by the Administrator in its sole and absolute discretion.

3. Section 2.17 (formerly section 2.16), "Year Of Service," is amended and restated to read as follows:

2.17. Year Of Service.

"Year Of Service" means an Employee's total service credit as calculated by the California Public Employees' Retirement System pursuant to California Government Code section 20069 and related statutes, whether such service was performed for the Employer or for an employer other than the Employer, without inclusion of any service credit purchased by the Employee.

4. Subsection A of section 3.01, "Eligible Retirees; Excluded Retirees," is amended and restated to read as follows:

A. Each Retiree who was not either an Executive Staff Employee or a Confidential Employee at the time of the Retiree's Termination Of Employment.

5. Section 3.02, "Eligibility Requirements," is amended and restated to read as follows:

3.02. Eligibility Requirements.

In order to become an eligible Retiree and to be eligible to become a Participant in the Plan, the Retiree must satisfy all of the following eligibility requirements:

- A. *The Retiree must have been credited with at least fifteen (15) Years Of Service as of the Retiree's Termination Of Employment.*
- B. *The Retiree must have been, on the date of the Retiree's Termination Of Employment, either an Executive Staff Employee or a Confidential Employee.*
- C. *The Retiree must have been, on the date of the Retiree's Termination Of Employment, a participant in PEMHCA.*
- D. *After the Retiree's Termination Of Employment, the Retiree must continue to be a participant in PEMHCA.*
- E. *If the Retiree is a Confidential Employee, the Retiree's Termination Of Employment must have been on or after January 1, 2020; if the Retiree is an Executive Staff Employee, the Retiree's Termination Of Employment need not have occurred on or after July 11, 2008 (i.e., the original effective date of the Plan).*
- F. *The Retiree must apply for retirement benefits (i.e., a pension) under CalPERS within one hundred twenty (120) days after the Retiree's Termination Of Employment.*

6. Section 4.04, "Benefit Limitations," is amended and restated to read as follows:

4.04. Benefit Limitations.

A Participant's reimbursements under this Plan for any month shall be limited to the excess, if any, of (i) the applicable percentage of the total monthly premium cost for the PEMHCA coverage for the Participant and the Participant's Dependents set forth below over (ii) the then current minimum monthly contribution required under California Government Code section 22892(b) (e.g., one hundred thirty-six dollars (\$136) per month in 2019). The applicable percentage is determined as follows:

- A. *If the Retiree is an Executive Staff Employee who became an Executive Staff Employee before January 1, 2018 (including a Retiree who was reemployed or reinstated as an Executive Staff Employee before such date), the applicable percentage shall be one hundred percent (100%).*

- B. *If the Retiree is an Executive Staff Employee who became an Executive Staff Employee on or after January 1, 2018 (including a Retiree who was reemployed or reinstated as an Executive Staff Employee on or after such date), the applicable percentage shall be the percentage of the total monthly premium cost for the PEMHCA coverage for an active Executive Staff Employee (e.g., eighty percent (80%) for 2018).*
- C. *If the Retiree is a Confidential Employee, the applicable percentage shall be the percentage of the total monthly premium cost for the PEMHCA coverage for an active Confidential Employee (e.g., eighty percent (80%) for 2018).*

7. The first sentence of section 5.01, "Employment Records," is amended and restated to read as follows:

The Employer shall maintain access to sufficient employment records to determine benefits under the Plan for each Retiree.

All other provisions of the Plan as in effect prior to this Amendment shall remain unchanged by this Amendment.

Executed this _____ day of _____, 2019.

State Bar Of California

By: _____

Title: _____



DELEGATION OF AUTHORITY TO REQUEST DISBURSEMENTS

RESOLUTION OF THE

Board of Trustees

(GOVERNING BODY)

OF THE

The State Bar of California

(NAME OF EMPLOYER)

The Board of Trustees delegates to the incumbents
(GOVERNING BODY)

in the positions of Executive Director and
(TITLE)

Chief Administrative Officer and/or
(TITLE)

Chief Financial Officer authority to request on
(TITLE)

behalf of the Employer disbursements from the Other Post Employment Prefunding
Plan and to certify as to the purpose for which the disbursed funds will be used.

By _____

Title _____

Witness _____

Date _____

**STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN
FOR EXECUTIVE STAFF EMPLOYEES**

**STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN
FOR EXECUTIVE STAFF EMPLOYEES**

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**STATE BAR OF CALIFORNIA
POST-RETIREMENT WELFARE BENEFITS PLAN
FOR EXECUTIVE STAFF EMPLOYEES**

The State Bar Of California (Employer) hereby adopts the State Bar Of California Post-Retirement Welfare Benefits Plan For Executive Staff Employees (Plan) on the date set forth on the signature page hereof, for the exclusive benefit of its eligible retirees and certain members of their families.

RECITALS

Whereas:

- A. The Employer provides post-retirement medical benefits to its eligible executive staff employees pursuant to the Plan as originally adopted effective as of July 11, 2008 and as most recently amended as of April 10, 2017.
- B. The Employer also provides health benefits to its eligible employees and certain of its retired employees pursuant to the Public Employees' Medical and Hospital Care Act (PEMHCA) that is administered by the Board of Administration of the California Public Employees' Retirement System (CalPERS).
- C. The Employer makes equal minimum contributions towards these benefits for both eligible active employees and eligible retired employees in accordance with PEMHCA's requirements.
- D. The Employer has determined that it is in the best interests of the Employer and its eligible executive staff employees to restate the Plan in its entirety in order to provide for the reimbursement of certain of its retirees for all or a portion of their PEMHCA health insurance premiums in excess of the premiums that the Employer pays directly to CalPERS under PEMHCA.

OPERATIVE PROVISIONS

Now, therefore, the Employer adopts the amended and restated Plan upon the following terms and conditions:

ARTICLE 1. GENERAL PROVISIONS

1.01. Plan Name.

The name of this Plan is the "State Bar Of California Post-Retirement Welfare Benefits Plan For Executive Staff Employees."

1.02. Effective Date.

The effective date of this amended and restated Plan is May 1, 2018.

1.03. Exclusive Benefit.

It is the intention of the Employer that the Plan is created and maintained for the exclusive benefit of the Employer's eligible Retirees and their Dependents.

1.04. Income Tax And ERISA Status.

The Plan is intended to qualify as a health plan under Code sections 105 and 106 covering health expenses through the reimbursement of Retiree health insurance premiums such that any benefits that a Retiree or a Dependent receives under the Plan shall be excluded from gross income. The Plan is a "governmental plan" as defined in Code section 414(d) and section 3(32) of ERISA and, as such, is exempt from the provisions of ERISA.

1.05. Administrator Of The Plan.

The person(s), individual(s) or committee appointed by the Employer shall be the Administrator of the Plan. The Administrator may engage the services of one or more third parties to assist the Administrator with the administration of the Plan. If the Employer does not appoint an Administrator, the Employer's Chief Administrative Officer shall be the Administrator.

1.06. Defined Terms.

All initially capitalized terms are defined terms and will be defined in the General Definitions article.

ARTICLE 2. GENERAL DEFINITIONS

For purposes of this Plan, unless otherwise clearly apparent from the context, the following phrases or terms shall have the following indicated meanings:

2.01. Administrator.

"Administrator" means the person(s), individual(s) or committee appointed by the Employer from time to time with authority and responsibility to manage and direct the operation and administration of the Plan.

2.02. CalPERS.

"CalPERS" means the California Public Employees' Retirement System.

2.03. Code.

"Code" means the Internal Revenue Code of 1986, as it may be amended from time to time.

2.04. Dependent.

"Dependent" means a person entitled under the provisions of the PEMHCA group health plan that covers a Participant (or that covered a deceased Participant prior to his or her death) to receive benefits payable under the PEMHCA group health plan because of the person's relationship to the Participant.

2.05. Employee.

"Employee" means an individual (i) who is employed by the Employer, (ii) who is classified as a "regular employee" by the Employer, (iii) who is on the regular payroll of the Employer, (iv) for whom the Employer withholds employment taxes, and (v) for whom the Employer issues an IRS Form W-2. Therefore, for example, a common law employee for whom the Employer does not issue a Form W-2 is not an "Employee." "Employee" does not include casual or contract employees. An individual's status as an "Employee" will be determined solely by the Administrator in its sole and absolute discretion.

2.06. Employer.

"Employer" means the Employer adopting the Plan and any successor assuming the Plan, which shall be responsible for the administration and management of the Plan except for those duties specifically delegated to the Administrator.

2.07. ERISA.

"ERISA" means the Employee Retirement Income Security Act of 1974, Public Law 93-406, enacted September 2, 1974, as it may be amended from time to time.

2.08. Executive Staff Employee.

"Executive Staff Employee" means an Employee who is classified by the Employer as an "executive staff employee" and whose terms of employment are set forth under the Employer's "Rules and Regulations Pertaining to the Employment of Executive Staff Employees." An individual's status as an "Executive Staff Employee" will be determined solely by the Administrator in its sole and absolute discretion.

2.09. HIPAA.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as it may be amended from time to time, and the regulations issued thereunder.

2.10. Participant.

"Participant" means any Retiree who has (i) met the Plan's eligibility requirements, (ii) properly completed and returned the applications and agreements required under, and in accordance with, the Application For Participation section, below, (iii) commenced participation in the Plan pursuant to the Commencement Of Participation section, below, and (iv) is or may become eligible to receive a benefit under the Plan, or whose Dependents may be eligible to receive any such benefit.

2.11. PEMHCA.

"PEMHCA" means the Public Employees' Medical and Hospital Care Act as set forth in California Government Code sections 22750 et seq. as in effect from time to time.

2.12. Plan.

"Plan" means the retiree health insurance premium reimbursement plan as set forth herein and any amendments hereto.

2.13. Plan Year.

"Plan Year" means the twelve (12) consecutive month period ending on December 31 of each year.

2.14. Retiree.

"Retiree" means a former Employee who retired from the Employer and who is eligible for benefits under the Plan in accordance with the criteria set forth in the Eligibility And Participation article, below, and the Plan Benefits article, below.

2.15. Termination Of Employment.

"Termination Of Employment" means no longer being an Employee for any reason.

2.16. Year Of Service.

"Year Of Service" means a completed period of one (1) year of continuous, uninterrupted service as an Employee, subject to the following rules:

- A. Such service must be regular employment as an Employee that is either (i) full-time or (ii) part-time on at least fifty percent (50%) of a full-time basis.
- B. Such service will include any period of authorized paid leave of absence while an Employee and any leave for military service while an Employee, but only if the Employee returns to active employment with the Employer as an Employee within the time prescribed by such leave or within the time following military service during which the Employee's reemployment rights are protected by law, as applicable.
- C. Service performed before the effective date of the Plan will be counted as service under the Plan.
- D. No service or employment with any entity other than the Employer will be counted as service for any purpose under the Plan.
- E. Any periods of service for the Employer in any capacity other than Employee will not be counted as service under the Plan.
- F. Service before a Termination Of Employment (or termination of status as an Employee) will be added to service earned after an individual again becomes an Employee in order to count the person's total Years Of Service.

ARTICLE 3. ELIGIBILITY AND PARTICIPATION

3.01. Eligible Retirees; Excluded Retirees.

All Retirees, who are not otherwise excluded from participation in the Plan, are eligible to participate in the Plan after completion of the eligibility requirements set forth in the Eligibility Requirements section, below. The Plan excludes the following Retirees (even if they might otherwise satisfy the eligibility criteria specified in the Plan):

- A. Each Retiree who was not an Executive Staff Employee at the time of the Retiree's Termination Of Employment;
- B. Each Retiree who was not eligible for PEMHCA coverage while the Retiree was an active Employee if the Retiree's Termination Of Employment is on or after May 1, 2018;
- C. Each Retiree who was not covered by PEMHCA at the time of the Retiree's Termination Of Employment if the Retiree's Termination Of Employment is on or after May 1, 2018;
- D. A Retiree whose employment is, or immediately before he or she terminated employment with the Employer was, governed by the terms of a collective bargaining agreement between Employee representatives (within the meaning of Code section 7701(a)(46)) and the Employer under which employee benefits were the subject of good faith bargaining, unless the collective bargaining agreement specifically requires participation of such Retirees in the Plan, but only to the extent provided for in the collective bargaining agreement and only to the extent such participation is not inconsistent with the requirements of the Code; and
- E. A worker whom the Employer did not treat as an Employee even if the worker is subsequently determined to be an Employee by a local, State or federal governmental entity or by a court of competent jurisdiction.

3.02. Eligibility Requirements.

In order to become an eligible Retiree and to be eligible to become a Participant in the Plan, the Retiree must satisfy all of the following eligibility requirements:

- A. The Retiree must have been credited with at least the following Years Of Service:

1. If the Retiree became an Executive Staff Employee on or before August 19, 2006, and was continuously employed as an Executive Staff Employee from that date until Termination Of Employment, at least fifteen (15) Years Of Service as of the Retiree's Termination Of Employment; or
 2. If the Retiree became an Executive Staff Employee after August 19, 2006 (including a Retiree who was reemployed or reinstated as an Executive Staff Employee after such date), at least (i) ten (10) Years Of Service as an Executive Staff Employee as of the Retiree's Termination Of Employment and (ii) fifteen (15) Years Of Service as an Employee regardless of whether as an Executive Staff Employee.
- B. The Retiree must have been, on the date of the Retiree's Termination Of Employment, an Executive Staff Employee.
- C. If the Retiree's Termination Of Employment is on or after May 1, 2018, the Retiree must have been, on the date of the Retiree's Termination Of Employment, a participant in PEMHCA .
- D. The Retiree must be a participant in PEMHCA.
- E. If the Retiree's Termination Of Employment is on or after May 1, 2018, the Retiree must apply for retirement benefits (i.e., a pension) under CalPERS within one hundred twenty (120) days after the Retiree's Termination Of Employment.

The Retiree's Termination Of Employment need not have occurred on or after July 11, 2008 (i.e., the original effective date of the Plan).

3.03. Commencement Of Participation.

Each Retiree who is not otherwise excluded from participation in the Plan shall become a Participant in the Plan on the first day of the month coinciding with or following (i) the Retiree's becoming an eligible Retiree as set forth in the Eligibility Requirements section, above, and (ii) the Retiree's proper completion and return of the applications and agreements required under the Application For Participation section, below, if any. Dependents of Participants may participate in the Plan only as set forth in the Plan.

3.04. Participation.

The Administrator, using employment dates certified by the Employer, shall determine which Retirees are eligible to participate. The Administrator shall notify each Retiree of the Retiree's eligibility and of any application or other requirements for participation. By becoming a Participant, the Retiree agrees to be bound by all terms, conditions and covenants of the Plan as then in effect or as thereafter amended.

3.05. Application For Participation.

To become a Participant, an eligible Retiree shall, to the extent necessary or appropriate under the procedures established by the Administrator, (i) sign any application or agreements as may be required by the Employer or the Administrator and (ii) return such properly completed applications and agreements to the Employer or the Administrator on or before the deadline established by the Employer or the Administrator.

3.06. Termination Of Participation.

- A. Except as otherwise provided elsewhere in the Plan, a Participant will automatically cease to be a Participant on the earliest of the following dates:
 - 1. The date of the Participant's death;
 - 2. The date of the Participant's failure to continue to be an eligible Retiree;
 - 3. The date when the Participant ceases to be covered by PEMHCA; or
 - 4. The date of the termination of the Plan in accordance with the Amendments And Termination article.
- B. Termination of participation shall not affect the right of a Participant or a Participant's Dependents to claim benefits for expenses incurred prior to such termination. However, no additional expenses incurred after such termination shall be covered by the Plan. For purposes of the Plan, an expense with respect to the reimbursement of insurance premiums shall be "incurred" when the insurance premiums for the month of coverage are due.

ARTICLE 4. PLAN BENEFITS

4.01. Benefits In General.

Subject to the limitations of this Plan Benefits article, the benefits provided under this Plan for a Participant shall consist of reimbursements in accordance with the Health Insurance Premium Benefits section, below.

4.02. Self-Insured Benefits.

The benefits payable from this Plan are self-insured benefits. Some or all of the benefits payable under this Plan may be paid, but shall not be required to be paid, from a welfare benefit plan trust established by the Employer. Such a trust may be, but shall not be required to be, a tax-exempt trust pursuant to Code section 115 or Code section 501(c)(9). The benefits payable under this Plan, other than any benefits from such a trust, shall be paid from the general assets of the Employer.

4.03. Health Insurance Premium Benefits.

- A. The Plan will periodically reimburse the Participant for the Participant's premiums that have been paid to PEMHCA by the Participant (either directly by the Participant or withheld from the Participant's CalPERS benefits), based upon appropriate proof of prior payment of such premiums, up to the amount available to the Participant under the Benefit Limitations section, below.
- B. There shall be no reimbursement to or payment on behalf of a Participant under this section to the extent there is other reimbursement to or payment on behalf of the Participant.
- C. The reimbursement of premiums shall be subject to receipt of such proof, forms and materials as the Administrator shall require from time to time. The Plan will reimburse a Participant for the Participant's health insurance premiums only if (i) the Plan or the Employer receives or obtains written verification that the cost has been incurred and the amount of such expense, and (ii) the Participant provides such written statement as the Administrator may require, in its sole discretion, that the cost has not be reimbursed or is not reimbursable under any other health plan and conveying any further information that the Administrator may require.
- D. The benefit provided under this section is intended to comply with the provisions of Code sections 105 and 106 and with the

guidance provided by Revenue Ruling 61-146. This section, therefore, will be deemed to be automatically amended to comply with all legislative changes to, and valid regulations promulgated under, these Code sections, as of the effective date of such legislation or regulations and any subsequent guidance modifying, clarifying or superseding Revenue Ruling 61-146.

- E. The Plan may, in the Employer's or Administrator's sole and absolute discretion, pay any or all of the amounts described above directly to the appropriate third party payee (e.g., CalPERS) in lieu of making reimbursement to the Participant therefor. In the event of such payment or upon the reimbursement of premiums, the Plan and the Employer shall be relieved of all further responsibility with respect to any such premiums and the provision of benefits under the Plan.

4.04. Benefit Limitations.

A Participant's reimbursements under this Plan for any month shall be limited to the excess, if any, of (i) the applicable percentage of the total monthly premium cost for the PEMHCA coverage for the Participant and the Participant's Dependents set forth below over (ii) the then current minimum monthly contribution required under California Government Code section 22892(b) (e.g., one hundred thirty-three dollars (\$133) per month in 2018). The applicable percentage is determined as follows:

- A. If the Retiree became an Executive Staff Employee before January 1, 2018 (including a Retiree who was reemployed or reinstated as an Executive Staff Employee before such date), the applicable percentage shall be one hundred percent (100%).
- B. If the Retiree became an Executive Staff Employee on or after January 1, 2018 (including a Retiree who was reemployed or reinstated as an Executive Staff Employee on or after such date), the applicable percentage shall be the percentage of the total monthly premium cost for the PEMHCA coverage for an active Executive Staff Employee (e.g., eighty percent (80%) for 2018).

4.05. Benefits Upon Death.

- A. Benefits under the Plan will be provided to a Participant only until the Participant's death. After the Participant's death, no further benefits will be paid or otherwise provided under the Plan with respect to the Participant or the Participant's Dependents or estate, except as required by law. This provision is not intended to, and does not, abrogate any obligations that the Employer may

have under PEMHCA to provide survivorship benefits to a Participant's Dependent following the death of the Participant, including continued payment of the then current minimum contribution required under California Government Code section 22892(b) on behalf of the Participant's Dependents in the event that the Participant had elected a survivorship benefit under PEMHCA.

- B. In the event that a Retiree dies before becoming a Participant, but after satisfying the eligibility requirements in the Eligibility Requirements section, above, including having a Termination Of Employment other than by reason of the Retiree's death, the Employee shall not be a Retiree, the Employee shall not become a Participant, and no benefits shall be payable under the Plan with respect to the Employee or the Employee's Dependents.
- C. In the event that an Employee's Termination Of Employment results from the Employee's death, the Employee shall not be a Retiree, the Employee shall not become a Participant, and no benefits shall be payable under the Plan with respect to the Employee or the Employee's Dependents.

4.06. Working Retirees.

No reimbursement of premiums shall be paid under this Plan with respect to a Retiree who has once again become an Employee. Such a Retiree's health insurance premium reimbursements from the Plan shall resume upon the Retiree's subsequent Termination Of Employment.

4.07. Distributions To Incapacitated Participants.

If the Administrator determines that a Participant or Dependent who is entitled to a payment under the Plan is incapable of personally receiving the payment, the Administrator may make all benefit distributions to the persons or institutions which are providing for the care and maintenance of the distributee and continue to make distributions to them until a duly appointed legal representative of the distributee makes a claim for the payment. Payments made pursuant to the terms of this Distribution To Incapacitated Participants section shall constitute a distribution to the Participant or Dependent entitled thereto, and shall immediately discharge the Employer, the Administrator, the Plan and all Plan fiduciaries of and from any further liability therefor.

4.08. Repayment Of Overpayment Of Benefits.

- A. By accepting payment of benefits under the Plan, the Participant or Dependent receiving the payment agrees that, in the event of overpayment, the Participant or Dependent will promptly repay the amount of overpayment, without interest, upon notice by the Administrator; provided that, if the Participant or Dependent has not repaid the overpayment within thirty (30) days after notice:
1. The Participant or Dependent will also pay an amount equal to simple interest at the rate of ten percent (10%) per annum (or the highest rate allowable, if less) on the unpaid amount from the date of overpayment to the date of repayment, and, in addition, will pay all legal fees, court costs and the reasonable time value of the Administrator or Employer, or any of their employees or agents, related to the collection of such overpayment; and
 2. The Administrator may deduct all or any portion of the overpayment, with interest, that is not timely repaid, from any amount that would otherwise then be payable or that may become payable, to the Participant or Dependent under the Plan.
- B. In the event that the Plan makes a payment to a Participant, Dependent or third party that is in excess of the amount otherwise due under the Plan, the Plan shall have an equitable lien on the excess portion of such payment, which shall be regarded by the Plan as a distinct and separate fund held by such Participant, Dependent or third party subject to such lien. Such lien shall continue in effect to any account of such Participant, Dependent or third party to which all or any portion of such payment is transferred, and as to any tangible or intangible asset acquired by such Participant, Dependent or third party using all or any portion of such payment.

ARTICLE 5. PLAN ADMINISTRATION

5.01. Employment Records.

The Employer shall maintain sufficient employment records to determine benefits under the Plan for each Retiree. The Employer shall make such records available to the Administrator, in a timely manner, and the Employer shall be responsible for the accuracy of such information, upon which the Administrator is entitled to rely.

5.02. Reports And Disclosure.

The Administrator shall prepare, file and distribute, in a timely manner, all reports and information to be disclosed to Participants as may be required by the Code or applicable State law. The Administrator shall prepare such reports from records kept by it and information furnished by the Employer.

5.03. Retention Of Records.

Every person subject to a requirement to file any description or report or to certify any information thereof under applicable law shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained or clarified and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts and applicable resolutions, and shall keep such records available for examination for a period of not less than six (6) years after the filing date of the documents based on the information which they contain.

5.04. Powers And Responsibilities.

- A. The Employer shall be empowered to appoint and remove the Administrator from time to time as it deems necessary for the proper administration of the Plan and to assure that the Plan is being operated for the exclusive benefit of the Participants and their Dependents in accordance with the terms of the Plan, the Code and applicable State law.
- B. The Employer shall periodically review the performance of any fiduciary or other person to whom duties have been delegated or allocated by it under the provisions of the Plan, or pursuant to procedures established hereunder. This requirement may be satisfied by formal periodic review by the Employer or by a qualified person specifically designated by the Employer, through day-to-day conduct and evaluation, or through other appropriate means.

5.05. Designation Of Administrative Authority.

- A. Any person, including, but not limited to, the Employees of the Employer, shall be eligible to serve as an Administrator. Any person appointed by the Employer to serve as the Administrator shall signify such appointee's acceptance by filing written acceptance with the Employer. An Administrator may resign by

delivering a written resignation to the Employer or may be removed by the Employer with or without cause by delivery of written notice of removal, to take effect at a date specified therein, or upon delivery to the Administrator if no date is specified.

- B. The Employer, upon the resignation or removal of an Administrator, shall promptly designate in writing a successor to this position. If the Employer does not appoint a successor Administrator, the Employer's Chief Administrative Officer will function as the Administrator.

5.06. Allocation And Delegation Of Responsibilities.

If more than one person is appointed as the Administrator, the responsibilities of each appointed person may be specified by the Employer and accepted in writing by each Administrator. In the event that the Employer makes no such delegation, the Administrators may allocate the responsibilities among themselves, in which event the Administrators shall notify the Employer in writing of such action and specify the responsibilities of each Administrator. Except where there has been an allocation and delegation of administrative authority pursuant to this section, if there shall be more than one Administrator, they shall act by a majority of their number, but may authorize one or more of them to sign all papers on their behalf. The Administrators may act with or without a meeting being called or held and shall keep minutes of all meetings held and a record of all actions taken by written consent. No Administrator may participate in any decision that involves solely the Administrator's interest as a Participant in the Plan.

5.07. Powers And Duties Of The Administrator.

The primary responsibility of the Administrator is to administer the Plan for the exclusive benefit of the Participants and their Dependents, subject to the specific terms of the Plan. The Administrator shall administer the Plan in accordance with its terms and shall have the power and discretion to interpret and construe the terms of the Plan, to decide any disputes and resolve any ambiguities which may arise relative to the rights of the Employees, past and present, and their Dependents, under the terms of the Plan, and to determine all questions arising in connection with the administration, interpretation and application of the Plan. Any such determination by the Administrator shall be conclusive and binding upon all persons. The Administrator may establish procedures, correct any defect, supply any information, or reconcile any inconsistency in such manner and to such extent as shall be deemed necessary or advisable to carry out the purpose of the Plan;

provided, however, that any such procedure, discretionary act, interpretation or construction shall be done in a nondiscriminatory manner based upon uniform principles consistently applied and shall be consistent with the intent that the Plan shall comply with the terms of the Code and all regulations issued pursuant thereto. The Administrator shall have all powers necessary or appropriate to accomplish its duties under the Plan.

5.08. Administrative Functions.

The Administrator shall:

- A. Determine Participant eligibility;
- B. Determine the amount of benefits which shall be payable to any person in accordance with the provisions of the Plan, inform the Employer of the amount of such benefits, and provide a full and fair review to any claim for benefits which has been denied in whole or in part;
- C. Designate other person(s) to carry out any duty or power which would otherwise be a fiduciary responsibility of the Administrator under the terms of the Plan including but not limited to delegating certain claims administration duties to a claims administrator, provided that any such delegation or allocation of responsibilities shall be set out in a written instrument executed by the Administrator and the designated party;
- D. Process claims and appeals from claims denied; and
- E. Make recommendations to the Employer concerning any phase of Plan management or administration.

5.09. Appointment And Responsibility Of Representatives.

- A. With the consent of the Employer or its designee, the Administrator shall have the right and the power to appoint one or more representatives, accountants, counsel, specialists, and other advisory and clerical persons as it deems necessary or desirable to assist the Administrator in the administration of the Plan. All usual and reasonable expenses of such representatives, accountants, counsel, specialists, and other advisory and clerical persons may be paid in whole by the Plan, in whole by the Employer (if the Employer agrees to do so in advance), or in part by the Plan and in part by the Employer (if the Employer agrees to do so in advance).

- B. The Administrator may designate any person as its agent for any purpose. The designated representative of the Administrator shall be responsible only for those specific powers, duties, responsibilities and obligations specifically given to it by the Administrator. The Administrator, the Employer and any person to whom the Administrator may delegate any duty or power in connection with the Plan's administration may rely upon all tables, valuations, certificates, reports and opinions furnished by any duly appointed actuary, accountant (including employees who are actuaries or accountants), legal counsel, or other specialist, and they shall be fully protected whenever they take action based in good faith in reliance thereon. All actions taken in good faith reliance on advice from the advisors are conclusive upon all persons. Any benefits not paid by the Plan shall not be the responsibility of the designated representatives.

5.10. Appointment Of Fiduciaries And Agents.

The Employer or its designee shall have the right to hire and fire any fiduciary or agent, including the Administrator, or any agent designated pursuant to the Appointment And Responsibility Of Representatives section, above.

5.11. Compensation Of Administrator.

The Administrator(s) shall receive no compensation from the Plan for acting as such, but the Plan shall reimburse the Administrator(s) for all necessary and proper expenses incurred in carrying out its duties under the Plan.

5.12. Use Of Electronic Media.

In accordance with Treasury regulations, the Administrator and the Trustee may use telephonic or electronic media to satisfy the notice requirements under this Plan.

5.13. HIPAA Privacy, Security And Transaction Standards.

Inasmuch as (i) certain members of the Employer's workforce may have access to protected health information (PHI) and electronic PHI, as defined in HIPAA and its implementing regulations (HIPAA Rules), for administrative functions of the Plan, and (ii) HIPAA and its implementing regulations require that the group health plan be amended to incorporate certain provisions and that the group health plan sponsor agree to such provisions in order for a group health plan's sponsor to

have access to PHI from the group health plan, the Employer and the Plan shall comply with the applicable privacy, security and administration regulations promulgated under HIPAA, as they may be in effect from time to time. In addition, the following provisions shall govern the use and disclosure of PHI by the Plan to the Employer by a group health plan benefit provided under the Plan (to the extent not inconsistent with such regulations):

A. Hybrid Entity Designations.

If the Plan is a hybrid entity as defined in the HIPAA Rules, then:

1. The Employer designates that the health care components of the Plan are the group health plan benefits provided under the Plan, if any, whether fully insured, self-insured, or a combination, and the administration functions of the Plan that relate to such benefits.
2. The Employer designates that the other components of the Plan are not health care components of the Plan.
3. The other components of the Plan that are not health care components shall be treated as if they were a separate legal entity from the health care components of the Plan for purposes of the following provisions.

B. Permitted Disclosure Of Enrollment/Disenrollment Information.

The Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose to the Employer information on whether the individual is participating in the Plan, or is enrolled in or has disenrolled from a health insurance issuer or HMO offered by the Plan.

C. Permitted Uses And Disclosure Of Summary Health Information.

The Plan (or a health insurance issuer or HMO with respect to the Plan) may disclose summary health information, as defined in the HIPAA Rules, to the Employer, provided the Employer requests the summary health information for the purpose of obtaining premium bids from health plans for providing health insurance coverage under the Plan or modifying, amending, or terminating the Plan.

D. Uses And Disclosure For Plan Administrative Purposes.

Unless otherwise permitted by law, and subject to the conditions of disclosure described in the Conditions Of Disclosure For Plan Administration Purposes subsection, below, and obtaining written certification pursuant to the Certification Of Employer subsection, below, the Plan (or a health insurance issuer or HMO on behalf of the Plan) may disclose PHI to the Employer; provided, however, that the Employer may use or disclose such PHI for Plan administration purposes only.

1. "Plan administration purposes" means administration functions performed by the Employer on behalf of the Plan, such as quality assurance, claims processing, auditing, and monitoring.
2. Plan administration functions do not include functions performed by the Employer in connection with any other benefit or benefit plan of the Employer, and they do not include any employment-related functions.

Notwithstanding the provisions of the Plan to the contrary, in no event shall the Employer be permitted to use or disclose PHI in a manner that is inconsistent with section 164.504(f) of the HIPAA Rules.

E. Conditions Of Disclosure For Plan Administration Purposes.

The Employer agrees that, with respect to any PHI (other than enrollment/disenrollment information and summary health information, that are not subject to these restrictions) disclosed to it by the Plan (or a health insurance issuer or HMO on behalf of the Plan), the Employer shall:

1. Not use or further disclose the PHI other than as permitted or required by the Plan or as required by law;
2. Ensure that any agent, including a subcontractor, to whom it provides PHI received from the Plan agrees to the same restrictions and conditions that apply to the Employer with respect to PHI;
3. Not use or disclose the PHI for employment-related actions and decisions or in connection with any other benefit or employee benefit plan of the Employer;

4. Report to the Plan any use or disclosure of the information that is inconsistent with the uses or disclosures provided for of which it becomes aware;
5. Make available PHI to comply with HIPAA's right to access in accordance with section 164.524 of the HIPAA Rules;
6. Make available PHI for amendment and incorporate any amendments to PHI in accordance with section 164.526 of the HIPAA Rules;
7. Make available the information required to provide an accounting of disclosures in accordance with section 164.528 of the HIPAA Rules;
8. Make its internal practices, books and records relating to the use and disclosure of PHI received from the Plan available to the Secretary of Health and Human Services for purposes of determining compliance by the Plan with HIPAA's privacy requirements;
9. If feasible, return or destroy all PHI received from the Plan that the Employer still maintains in any form and retain no copies of such information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
10. Ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall") required by section 164.504(f)(2)(iii) of the HIPAA Rules is satisfied.

F. Conditions Of Disclosure Of Electronic PHI To The Employer.

The Employer further agrees that if it creates, receives, maintains, or transmits any electronic PHI (other than enrollment or disenrollment information, summary health information, and information disclosed pursuant to a signed authorization that complies with section 164.508 of the HIPAA Rules, that are not subject to these restrictions) on behalf of the Plan, the Employer shall:

1. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the

confidentiality, integrity, and availability of the electronic PHI;

2. Ensure that the adequate separation between the Plan and the Employer (i.e., the "firewall") required by section 164.504(f)(2)(iii) of the HIPAA Rules is supported by reasonable and appropriate security measures;
3. Ensure that any agents (including subcontractors) to whom the Employer provides such electronic PHI agree to implement reasonable and appropriate security measures to protect the information; and
4. Report to the Plan any electronic PHI security incident of which it becomes aware.

G. Adequate Separation Between The Plan And The Employer.

The Employer shall allow only those employees of the Employer who are responsible for the Plan's administration functions to have access to the PHI. No other employees of the Employer shall have access to PHI. These employees shall have access to and use PHI only to the extent necessary to perform the plan administration functions that the Employer performs for the Plan. In the event that any of these specified employees do not comply with the provisions of this provision, such employee(s) shall be subject to disciplinary action by the Employer for noncompliance pursuant to the Employer's employee discipline and termination of employment procedures. The Employer shall ensure that the preceding provisions are supported by reasonable and appropriate security measures to the extent that such employees have access to electronic PHI.

H. Certification Of The Employer.

The Plan (or a health insurance issuer or HMO with respect to the Plan) shall disclose PHI to the Employer only upon the receipt of a certification by the Employer that the Plan has been amended to incorporate the provisions required by section 164.504(f)(2)(ii) of the HIPAA Rules and that the Employer agrees to the conditions of disclosure set forth in the Conditions Of Disclosure For Plan Administration Purposes subsection, above.

I. Genetic Information.

The Plan shall comply with the requirements of the Genetic Information Nondiscrimination Act Of 2008 (GINA) to the extent required by the provisions of GINA and the regulations thereunder, effective as of May 21, 2009, or such later date as may be provided under the regulations under GINA.

ARTICLE 6. CLAIMS PROCEDURES

6.01. Request For Information.

Any Participant or Dependent may request such information concerning the Participant's or Dependent's rights or benefits under the Plan as would be required to be disclosed under part 1, title I of ERISA if it applied to the Plan. The Administrator shall respond, in writing, within a reasonable time, not to exceed thirty (30) days, unless the failure to respond results from matters reasonably beyond the Administrator's control.

6.02. Claims For Benefits.

In order to receive benefits under the Plan, the Participant must submit satisfactory proof of entitlement to such a benefit as set forth in this Claims Procedures article.

6.03. Filing Claims.

- A. Any Participant, Dependent, or duly authorized representative of a Participant or Dependent (Claimant) may file a claim for benefits to which such Claimant believes he or she is entitled. Claims must be made in writing and shall be delivered to the Administrator or a service provider designated by the Administrator. Claimants shall provide the Administrator with such information and evidence, and shall sign such documents, as may reasonably be requested from time to time for the purpose of administration of the Plan.
- B. Unless otherwise announced by the Administrator, a claim for benefits incurred during a Plan Year must be made no later than ninety (90) days after the end of such Plan Year. Any delinquent claims will not be paid.

6.04. Initial Determination Of Claim.

- A. The Administrator shall have full discretion to grant or deny a claim in whole or in part.
- B. The Administrator will notify the Claimant, in writing, of the granting or denying, in whole or in part, of such claim, within thirty (30) days after receipt of such claim; provided, however, that if the Administrator determines that an extension of time for processing the claim is necessary due to matters beyond the control of the Administrator, this period may be extended no more than fifteen (15) days from the end of the initial thirty (30) day period.
- C. If an extension of time is necessary, the Claimant must be given a written notice to this effect prior to the expiration of the initial thirty (30) day period and the notice must indicate the special circumstances requiring the extension and the date by which a decision will be made. If such an extension is necessary due to a failure of the Claimant to submit the information necessary to decide the claim, the notice shall specifically describe the required information and the Claimant shall submit the specified information no later than forty-five (45) days from receipt of the notice by the Claimant.
- D. If a claim is denied in whole or in part, the Administrator's notice denying such claim shall set forth, in a manner calculated to be understood by the Claimant, the following:
 - 1. The specific reason or reasons for the denial;
 - 2. Specific reference to pertinent Plan provisions on which the denial is based;
 - 3. A description of any additional material or information necessary for the Claimant to perfect the claim and an explanation of why such material information is necessary; and
 - 4. An explanation of the Plan's claim review procedures.
- E. If notice of the granting or denying of a claim is not furnished in accordance with the preceding provisions, the claim shall be deemed denied and the Claimant shall be permitted to exercise the Claimant's right to review pursuant to the Claims Appeals section, below.

6.05. Claims Appeals.

If a claim for benefits is fully or partially denied, the following appeal procedures shall apply:

- A. If a Claimant wishes to appeal a denial of a claim, the Claimant or the Claimant's duly authorized representative:
 - 1. May request a review upon written application to the Administrator;
 - 2. May submit written comments, documents, records, and other information relating to the claim; and
 - 3. May obtain, upon request and free of charge reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8)) to the Claimant's claim for benefits.
- B. The written request for review must be received by the Administrator within one hundred eighty (180) days after the Claimant receives notice that the Claimant's claim for Plan benefits has been denied.
- C. The decision on the review shall be made by the Administrator, who may, in its discretion, hold a hearing on the denied claim; provided, however, that the following requirements shall apply:
 - 1. The review of the denied claim shall not afford deference to the initial claim denial and shall be conducted by an appropriate named fiduciary who is neither the individual who made the adverse benefit determination that is the subject of the review nor the subordinate of such individual;
 - 2. If the adverse benefit determination that is the subject of the review was based in whole or in part on a medical judgment, the appropriate named fiduciary of the Plan shall consult with a health care professional who has appropriate training and experience in the field of medicine involved in the medical judgment, and who shall not be the individual who was consulted in connection with the

adverse benefit determination that is the subject of the review, nor the subordinate of such individual.

3. Any medical or vocational experts whose advice was obtained on behalf of the Plan in connection with a Claimant's adverse benefit determination shall be identified without regard to whether the advice was relied upon in making the benefit determination.
- D. The Administrator shall make its decision promptly, and not later than sixty (60) days after the Administrator's receipt of the request for a review; provided, however that if the Administrator determines that an extension of time for processing the claim is necessary due to matters beyond the control of the Administrator, this period may be extended no more than sixty (60) days from the end of the initial sixty (60) day period. If an extension of time is necessary, the Claimant must be given a written notice to this effect prior to the expiration of the initial sixty (60) day period and the notice must indicate the special circumstances requiring the extension and the date by which a decision will be made on review.
- E. The decision on review must be written in a manner calculated to be understood by the Claimant. In the case of an adverse benefit determination, the notification to the Claimant shall set forth, in a manner calculated to be understood by the Claimant, the following:
1. The specific reason or reasons for the denial;
 2. Specific reference to pertinent Plan provisions on which the denial is based; and
 3. A statement that the Claimant is entitled to receive, upon request and free of charge reasonable access to, and copies of, all documents, records, and other information relevant (determined in accordance with Department of Labor regulations section 2560.503-1(m)(8)) to the Claimant's claim for benefits.
- F. If the decision on review is not furnished to the Claimant within the time required in this section, the claim shall be deemed denied on review and the Claimant shall be permitted to exercise the Claimant's right to legal remedy pursuant to the remaining sections of this Claims Procedures article.

6.06. Legal Actions.

- A. A Claimant must submit a written claim and exhaust the preceding claims procedures before legal recourse of any type is sought. Except as explicitly permitted by statute, the Administrator and the Employer are the only necessary parties to any action or proceeding that involves the Plan or the administration of the Plan. No Employees or former Employees or their dependents or beneficiaries or any person having or claiming to have an interest under the Plan is entitled to notice of process. Any final judgment that is not appealable for any reason (including the passage of time) and that is entered in an action or proceeding involving the Plan is binding and conclusive on the parties to the Plan and all persons having or claiming to have any interest under the Plan.
- B. Judicial review of a Claimant's denied claim shall be limited to a determination of whether there was an abuse of discretion. No legal action may be commenced by a Claimant more than three (3) years after the final decision denying the claim.

6.07. Administration Pending Resolution Of Disputes.

If a dispute arises with respect to any matter under the Plan, the Administrator may refrain from taking any other or further action in connection with the matter involved in the controversy until the dispute has been resolved under the Plan. If a dispute arises as to the proper amount or recipient of any payment of benefits, the Administrator, in the Administrator's sole and absolute discretion, may withhold or cause to be withheld such payment until the dispute has been settled by the parties concerned, or the Administrator may deposit such funds or property with the court in an interpleader action brought under the law of the State having jurisdiction.

6.08. Time.

The filing of claims or receipt of notices of rulings and any event starting a time period shall be deemed to commence with personal delivery signed for by the Claimant or by affidavit of personal service, or the date of actual receipt of certified mail or date returned if delivery is refused or a Claimant has moved without giving the Administrator a forwarding address.

ARTICLE 7. AMENDMENTS AND TERMINATION

7.01. No Vested Rights.

No Participant shall have any vested right to any benefits provided under the Plan.

7.02. Amendments.

- A. The Employer reserves the right to amend the Plan at any time, in its sole and absolute discretion, even after the Participant has performed the services required to earn a benefit under this Plan, without the consent of the Administrator, any fiduciary, or any Participant or Dependent; provided, however, that, except in accordance with the provisions of the Plan, or as otherwise specifically permitted by law, no such amendment shall affect any right to claim reimbursement of benefits incurred prior to the adoption date of such amendment. The Employer may make any amendment that it determines to be necessary or desirable, with or without retroactive effect, to comply with the law.
- B. Any such Plan amendment shall be made by means of a written instrument identified as an amendment of the Plan effective as of a specified date.
- C. Notwithstanding any other provision of the Plan to the contrary, if there is a scrivener's error in properly transcribing the provisions of the Plan, it shall not be a violation of the Plan terms to operate the Plan in accordance with its proper provisions, rather than in accordance with the term of the Plan, pending correction of the Plan through amendment. In addition, any provisions of the Plan improperly added as a result of scrivener's error shall be considered null and void as of the date such error occurred.

7.03. Plan Termination.

The Employer reserves the right to terminate the Plan in part or in whole at any time, in its sole and absolute discretion, by appropriate action; provided, however, that such termination shall not affect any right to claim reimbursement of benefits incurred prior to such termination. In the event of the dissolution, merger, consolidation or reorganization of the Employer, the Plan shall terminate unless the Plan is continued by a successor to the Employer.

ARTICLE 8. MISCELLANEOUS

8.01. Nonalienation Of Benefits.

- A. Subject to the exceptions provided below and as otherwise specifically permitted by law, no assets or benefits under the Plan shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, charge, garnishment, execution or levy of any kind, either voluntary or involuntary, including any such liability which is for alimony or other payments for the support of a spouse or former spouse, or for any other relative of the Participant, prior to actually being received by the person entitled to the benefit under the terms of the Plan. Any attempt to so anticipate, alienate, sell, transfer, assign, pledge, encumber, charge, garnish, execute or levy shall be void. Nor shall any such benefits in any manner be liable for, or subject to, the debts, contracts, liabilities, or torts of any person entitled to such benefits.
- B. The prohibitions contained in this Nonalienation Of Benefits section shall not apply to the extent a Participant or Dependent is indebted to the Plan, for any reason, under any provision of the Plan. At the time a distribution is to be made to or for a Participant's or Dependent's benefit, such proportion of the amount distributed as shall equal such indebtedness shall be retained by the Plan to apply against or discharge such indebtedness. Prior to such application, however, the Administrator must give written notice to the Participant or Dependent that such indebtedness is to be so paid in whole or part from the Participant's benefit. If the Participant or Dependent does not agree that the indebtedness is a valid claim against the Participant's benefit, the Participant or Dependent shall be entitled to a review of the validity of the claim in accordance with procedures provided in the Claims Procedures article.

8.02. Limitation Of Rights: Employment Relationship.

Nothing contained in the Plan shall be construed as a contract of employment between the Employer and any Employee, or as a right of any Employee to be continued in the employment of the Employer, or as creating or modifying the terms of an Employee's employment, or as a limitation on the right of the Employer to discharge any Employee, with or without cause. Unless the law or the Plan explicitly provides otherwise, rights under any other employee benefit plan maintained by the Employer (for example, benefits upon an Employee's death, retirement, or other termination) do not create any rights under the Plan

to benefits or continued participation. The fact that an individual is eligible to receive benefits under the Plan does not create any rights under any other employee benefit plan maintained by any Employer, unless that plan or the law explicitly provides otherwise.

8.03. Limitation Of Rights Of Participants And Others.

Neither the establishment of the Plan, nor any modifications thereof, nor the creation of any fund or account, nor the payment of any benefits, shall be construed as giving to any Participant or any other person any legal or equitable right against the Employer, the Administrator, or its designated representative, except as expressly provided herein or as provided by law.

8.04. Release From Liability.

Any payment to any Participant, or to the Participant's legal representative or Dependent, in accordance with the provisions of the Plan, shall to the extent thereof be in full satisfaction of all claims hereunder against the Plan, the Employer, the Administrator, and any Plan fiduciary, any of whom may require such Participant, legal representative or Dependent, as a condition precedent to such payment, to execute a receipt and release therefor in such form as shall be determined by the Employer, the Administrator, or any Plan fiduciary, as the case may be.

8.05. Indemnity.

The Employer hereby agrees to indemnify and hold harmless each present and future Administrator and its employees, and all duly authorized agents, against all liabilities, costs and expenses, including, without limitation, attorneys' fees reasonably incurred by, or imposed upon, such person in connection with, or arising out of, any claims, demands, suits, actions or proceedings in which such indemnified party may be involved, except in the case of the willful misconduct of any such indemnified party. Expenses shall include the cost of reasonable settlement made with the view to curtailment of costs of litigation. The foregoing right of indemnification shall not be exclusive of other rights to which such indemnified party may be entitled as a matter of law.

8.06. Expenses.

Upon written instructions from the Administrator, the Plan shall pay the expenses necessary to carry out the administration of the Plan that are not paid by the Employer.

8.07. Insurers Not A Party.

No insurer shall be considered a party to the Plan, nor to any future amendment to the Plan. The rights and obligations of any insurer are those specified in the insurance contract and no provisions of any portion of the Plan shall be deemed to alter or change the terms of such insurance contract.

8.08. State Laws.

The Plan is designed to be consistent with applicable State laws, to the extent that they are not preempted by any applicable federal law.

8.09. Construction.

No provision of the Plan shall be construed to conflict with any Treasury Department, Department of Labor or Internal Revenue Service regulation, ruling, release or proposed regulation or other order which affects, or could affect, the terms of the Plan. If any provision is susceptible of more than one interpretation, such interpretation shall be given thereto as is consistent with the Plan being in conformity with the Code and administered in conformity with all federal and State laws that apply to the Plan.

8.10. Headings.

The headings and subheadings of the Plan have been inserted for convenience of reference and are to be ignored in any construction of the provisions hereof.

8.11. Uniformity.

All provisions of the Plan shall be interpreted and applied in a uniform, nondiscriminatory manner.

8.12. Gender And Number.

Any reference in the masculine gender herein shall be deemed to also include the feminine gender, unless expressly provided otherwise. Wherever appropriate, any reference in this document in the singular shall include the plural and any reference in the plural shall include the singular.

8.13. Controlling Law.

Unless otherwise provided in the Plan, the Plan shall be construed and enforced according to the laws of the United States of America to the extent applicable, otherwise by the laws of California including California's choice-of-law rules, except to the extent those laws would require application of a State other than California.

8.14. Severability.

In the event that any provisions of this document shall be held illegal or invalid for any reason by operation of law or a court of competent jurisdiction, said illegality or invalidity shall not affect the remaining legal and valid provisions of this document. This document shall continue as if said illegal or invalid provisions had not been included herein either initially, or beyond the date it is first held to be illegal or invalid; provided the basic purposes hereof can be effected through the remaining valid and legal provisions.

8.15. Waiver.

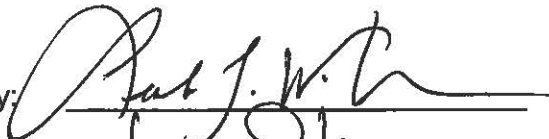
Failure to insist upon strict compliance with any provision of the Plan shall not be deemed to be a waiver of such provision or any other provision; waiver of breach of any provision of the Plan shall not be deemed to be a waiver of any other provision or subsequent breach of such provision. No term, condition, or provision of the Plan shall be deemed waived unless the purported waiver is in a writing signed by the party to be charged. No written waiver shall be deemed a continuing waiver unless so specifically stated in the writing, and such waiver shall operate only as to the specific term, condition, or provision waived.

8.16. Entire Document.

This document and any documents incorporated herein by reference, exhibits, appendices or supplements hereto shall constitute the entire document and shall govern the rights, liabilities and obligations of the parties under the Plan, except as it may be modified by a duly authorized and adopted amendment. No statements contained in any other writing or communication, including, but not limited to, a summary plan description or a summary of material modifications, shall constitute the terms of the Plan.

Executed this 11th day of May, 2018.

State Bar Of California

By: 

Name: Paul J. W. C.

Title: EP



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November 6, 2019

Sent via e-mail

Mr. John Adams
Chief Financial Officer
The State Bar of California
180 Howard Street
San Francisco, California 94105-1639

**The State Bar of California –
Analysis of Possible Retiree Health Plan Change – Non-Executive Units**

Dear Mr. Adams:

As requested, we have estimated the effect of a possible retiree health plan benefit change on the State Bar of California's ("State Bar") Other Post Employment Benefit (OPEB) liabilities. The current and alternate plan designs are described below.

Current Plan Effective May 1, 2018

Eligibility

Employees are eligible to enroll in health plans sponsored by CalPERS (PEMHCA) if they retire directly from State Bar with a CalPERS pension.

Health Benefits – Executive Employees Hired Before 1/1/2018

Executive employees and their spouses are eligible for medical and vision benefits upon retirement after age 50 and 15 years of State Bar service, and payable for the retiree's lifetime. Executives promoted on or after August 19, 2006, meet the service requirement on the later of 15 years of State Bar service from hire, and 10 years of State Bar service since their promotion date.

The State Bar pays the full cost of retiree health coverage for the executive retiree and dependents for the retiree's lifetime. Upon the death of the retiree, the retiree's surviving spouse may elect to continue coverage, but the State Bar would only pay the CalPERS statutory minimum (\$136 per month for 2018) and the surviving spouse would be required to pay the difference in premium cost.

Executives who retire directly from State Bar with a CalPERS pension and with less than 15 years of State Bar service are eligible to enroll in CalPERS health plans. The State Bar would be required to pay the statutory minimum (\$136 per month for 2019) and the retiree would be required to pay the difference in plan premium.

Health Benefits – Executive Employees Hired or Promoted on or After 1/1/2018

Executives hired on or after January 1, 2018 would become eligible for health benefits upon retirement on or after age 50 with at least 15 years of State Bar service, payable for the retiree's lifetime.

The State Bar would pay 80% of the cost of the premium for the plan and tier in which the retiree enrolls, and the retiree would pay the balance of the premium cost. Upon the death of the retiree, the retiree's surviving spouse may elect to continue coverage, but the State Bar would only pay the CalPERS statutory minimum (\$136 per month for 2019) and the surviving spouse would be required to pay the difference in premium cost.

Executives who retired directly from State Bar with a CalPERS pension and with less than 15 years of State Bar service are eligible to enroll in CalPERS health plans. The State Bar would be required to pay the statutory minimum (\$136 per month for 2019) and the retiree would be required to pay the difference in plan premium.

Health Benefits – Non-Executive Employees

Non-Executive employees retiring with a CalPERS pension would be eligible to enroll in the CalPERS Health Plan. The State Bar would be required to pay the statutory minimum (\$136 per month for 2019) and the retiree would be required to pay the difference in plan premium.

The following table gives a visual representation of the retiree medical benefits:

Group Description	Years of State Bar Service	Benefit during Retiree's Lifetime Paid by State Bar	Surviving Spouse Benefit after Retiree Death Paid by State Bar
Executive employees hired before 1/1/18	15+	100% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
Executive employees hired or promoted on/after 1/1/18	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
All non-Executive employees	N/A	PEMHCA Minimum	PEMHCA Minimum

Alternate Plan Design

State Bar would offer the same benefits as provided for Executive employees hired or promoted on or after January 1, 2018 to either (a) all non-Represented employees or (b) all Represented and non-Represented employees. The new benefits would apply to employees with one or more hours of service on or after January 1, 2020. In this alternate plan design, we assumed 100% of the non-Executive employees eligible to receive State Bar contributions in excess of the statutory minimum (i.e. retire with at least 15 years of State Bar service) are assumed to enroll in the offered coverage at retirement. We continue to assume 50% of the Non-Executive employees only eligible to receive the statutory minimum would enroll in the offered coverage at retirement.

Since this analysis is based on census data as of January 1, 2018, we assumed that employees retiring on or after January 1, 2018, rather than January 1, 2020, would be eligible for the alternative benefits for purposes of this study. Once census data as of January 1, 2020 is available, we can prepare an updated estimate of plan costs under the alternate plan designs.

The following table gives a visual representation of the retiree medical benefits under the alternate plan design:

Group Description	Years of State Bar Service	Benefit during Retiree's Lifetime Paid by State Bar	Surviving Spouse Benefit after Retiree Death Paid by State Bar
Executive employees hired before 1/1/18	15+	100% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
Executive employees hired or promoted on/after 1/1/18	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
All non-Executive employees with one or more hours of service on or after 1/1/17	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum

We also estimated the cost of the alternate plan design if all CalPERS service rather than State Bar service were used to determined eligibility for benefits as follows:

Group Description	Years of CalPERS Service	Benefit during Retiree's Lifetime Paid by State Bar	Surviving Spouse Benefit after Retiree Death Paid by State Bar
Executive employees hired before 1/1/18	15+	100% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
Executive employees hired or promoted on/after 1/1/18	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum
All non-Executive employees with one or more hours of service on or after 1/1/17	15+	80% Premiums Paid	PEMHCA Minimum
	Less than 15	PEMHCA Minimum	PEMHCA Minimum

Results

The attached Exhibit 1 compares the January 1, 2018 valuation results of the current plan with estimated results under the alternate plan design.

Data, Assumptions, Methods, Plan Provisions and Limitations

Except as described in this report, the results shown herein are based on the same actuarial assumptions, methods, plan provisions, and census data described in our report titled *The State Bar of California – Actuarial Valuation of Other Post Employment Benefits as of January 1, 2018 and GASB 75 Disclosure as of December 31, 2018* (“January 1, 2018 actuarial valuation report”). All limitations and caveats expressed in that report, including limits on usage, reliance on data, variability of results, and limitations on third party distribution, also apply to this report. The undersigned is a member of the American Academy of Actuaries and meets the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.



John Adams
November 6, 2019
Page 4

If you have any questions, please call me at (415) 394-3740.

Sincerely,

A handwritten signature in black ink, appearing to read 'John R. Botsford'.

John R. Botsford, FSA, MAAA
Consulting Actuary



Exhibit 1

State Bar of California - Analysis of Possible Retiree Health Plan Changes

The results shown below are based on the same actuarial assumptions, methods, and census data described in our January 1, 2018 actuarial valuation report. We have continued to use a 6% discount rate for the alternate plan design scenario based on the understanding that the State Bar will contribute the ADC in the future. Plan provisions modeled in the alternate plan design scenarios are as described in this study. The following table shows a comparison of OPEB liabilities of the current plan and alternate plan design scenarios. The table also shows a comparison of the alternative plan designs' eligibility based on State Bar service only and based on all CalPERS service.

As of June 30, 2018	Current Valuation	(a) Non-Represented Units		(b) Representative and Non-Rep Units	
		State Bar Service Only	With CalPERS Service	State Bar Service Only	With CalPERS Service
Active (Executives)	47	47	47	47	47
Active (Non Represented Employees)	35	35	35	35	35
Active (Represented Employees)	378	378	378	378	378
Retiree	<u>101</u>	<u>101</u>	<u>101</u>	<u>101</u>	<u>101</u>
Total	561	561	561	561	561
Valuation Date	01/01/2018	01/01/2018	01/01/2018	01/01/2018	01/01/2018
Measurement Date	06/30/2018	06/30/2018	06/30/2018	06/30/2018	06/30/2018
Discount Rate	6.00%	6.00%	6.00%	6.00%	6.00%
Total OPEB Liability	\$ 17,423,000	\$ 18,632,000	\$ 18,669,000	\$ 38,519,000	\$ 39,187,000
Fiduciary Net Position	<u>25,427,000</u>	<u>25,427,000</u>	<u>25,427,000</u>	<u>25,427,000</u>	<u>25,427,000</u>
Net OPEB Liability	\$ (8,004,000)	\$ (6,795,000)	\$ (6,758,000)	\$ 13,092,000	\$ 13,760,000
Change in Net OPEB Liability		1,209,000	1,246,000	\$ 21,096,000	\$ 21,764,000
Fiduciary Net Position as % of Total OPEB Liability	145.9%	136.5%	136.2%	66.0%	64.9%
Actuarially Determined Contribution (ADC)					
Amortization Period (in years)	15	15	15	15	15
Amortization of NOL as of June 30, 2018	\$ (778,000)	\$ (660,000)	\$ (656,000)	\$ 1,272,000	\$ 1,337,000
Service Cost as of June 30, 2018	548,000	659,000	677,000	1,904,000	2,141,000
Interest to June 30, 2019	<u>(14,000)</u>	<u>0</u>	<u>1,000</u>	<u>190,000</u>	<u>209,000</u>
ADC as of June 30, 2019	\$ 0	\$ 0	\$ 22,000	\$ 3,366,000	\$ 3,687,000
Change in ADC		\$ 0	\$ 22,000	\$ 3,366,000	\$ 3,687,000