



SAN DIEGO COUNTY
REGIONAL AIRPORT AUTHORITY
STAFF REPORT

Item No.
17

Meeting Date: **FEBRUARY 14, 2013**

Subject:

Provide Direction to Staff Regarding a Proposed Definition of Pensionable Earnings Under the California Public Employees' Pension Reform Act of 2013 (PEPRA)

Recommendation:

Provide staff with direction on a proposed definition of pensionable earnings to be advocated to SDCERS for use in implementing PEPRA.

Background/Justification:

The Authority and the San Diego City Employees' Retirement Systems ("SDCERS") are obligated to comply with the applicable provisions of the California Public Employees' Pension Reform Act of 2013 ("PEPRA") as adopted by the California legislature in 2012 where they affect the Authority's retirement plan. SDCERS administers the retirement plans of the Authority and the San Diego Unified Port District ("Port District").

One PEPRA provision applicable to the Authority's retirement plan mandates a new definition for "Pensionable Compensation" for "new members." PEPRA limits the pay items that may be included in Pensionable Compensation for individuals hired by the Authority on or after January 1, 2013. [See Cal. Gov. Code § 7522.04, subdiv. (f)] Pensionable Compensation for new members is defined in Cal. Gov. Code § 7522.34(a) as "the normal monthly rate of pay or base pay of the member paid in cash to similarly situated members of the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules." Additionally, Cal. Gov. Code § 7522.34(c) identifies 12 categories of payments that cannot be considered in calculating Pensionable Compensation, including such payments as one-time *ad hoc* payments, severance payments in anticipation of separation, unused vacation or leave, employer-provided allowances and reimbursements for housing or vehicles, employer contributions for deferred compensation, and bonuses.

At the SDCERS Board meeting in December 2012, SDCERS staff sought guidance from the SDCERS Board regarding the interpretation of "Pensionable Compensation" as it applies to Port District and Authority "new members" (hired on or after January 1, 2013) who are by law subject to the provisions of PEPRA. PEPRA does not apply to charter cities, including the City of San Diego.

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As discussed in December by the SDCERS Board and staff, determining what is included as Pensionable Compensation under PEPR is a SDCERS Board determination and is not subject to plan sponsor direction. The SDCERS Board's determination must be applied consistently to all plan sponsors covered by PEPR. Two approaches to interpreting "Pensionable Compensation" were identified, as follows:

1. Define Pensionable Compensation narrowly to include only base salary with no added pay elements.
2. Define Pensionable Compensation broadly to include base salary and any additional pay elements currently allowed in the plan except those pay elements that are specifically excluded in the PEPR legislation.

During the December SDCERS Board meeting, SDCERS staff was instructed to develop a Board Rule that incorporated a definition of Pensionable Compensation for PEPR implementing the narrow approach described in Paragraph 1, above. However, on January 3, 2013, SDCERS staff became aware of a December 27, 2012, CalPERS circular providing a slightly more expansive interpretation of Pensionable Compensation.

The current CalPERS definition of Pensionable Compensation is similar to the earlier proposed SDCERS Board Rule (5.60), but allows some discretion to plan sponsors to include differential pay elements to the extent that those pay elements meet the four criteria spelled out in PEPR: (1) paid in cash; (2) to similarly situated members of the same group or class; (3) for services rendered on a full-time basis during normal working hours, and (4) pursuant to publicly available pay schedules.

SDCERS staff created for the SDCERS Board's consideration an alternative SDCERS Board Rule that encompasses this slightly modified approach to interpretation of Pensionable Compensation.

SDCERS' fiduciary counsel has reviewed both versions of proposed Board Rule 5.60 and advises that either Board Rule (narrow approach or slightly more expanded definition) would be a reasonable interpretation of Pensionable Compensation under PEPR. SDCERS Staff has discussed both versions of the Board Rule with the Port District and the Authority.

Airport Authority Staff is requesting direction from the Authority's Board as to any preferences and opinions for establishing the definition of Pensionable Compensation for new members which could be shared with the SDCERS Board and staff.

Fiscal Impact:

Fiscal impact has not yet been determined. The intent of the legislation is to reduce retirement liabilities by restricting the types of pay considered for calculation of retirement benefits.

Authority Strategies:

This item supports one or more of the Authority Strategies, as follows:

- Community Strategy Customer Strategy Employee Strategy Financial Strategy Operations Strategy

Environmental Review:

- A. CEQA: This Board action, as an administrative action, is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act ("CEQA"), as amended. 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA. Cal. Pub. Res. Code §21065.
- B. California Coastal Act Review: This Board action is not a "development" as defined by the California Coastal Act. Cal. Pub. Res. Code §30106.

Equal Opportunity Program:

Not applicable

Prepared by:

JEFFREY A. WOODSON
VICE PRESIDENT

RESOLUTION NO. 2013-[ResoNo]

A RESOLUTION OF THE BOARD OF THE
SAN DIEGO COUNTY REGIONAL AIRPORT
AUTHORITY, PROVIDING DIRECTION TO STAFF
REGARDING A PROPOSED DEFINITION OF
PENSIONABLE EARNINGS UNDER CALIFORNIA
PUBLIC EMPLOYEES' PENSION REFORM ACT OF
2013 ("PEPRA")

WHEREAS, the San Diego County Regional Airport Authority ("Authority") now provides a defined benefit retirement plan for Authority employees; and

WHEREAS, the Authority's defined benefit plan is subject to the provisions of the California Public Employees' Pension Reform Act of 2013 ("PEPRA"); and

WHEREAS, The San Diego City Employees' Retirement System's ("SDCERS") Board of Administration ("Board"), in executing its duties under the PEPRA will need to determine the scope of a definition for pensionable earnings under the statute; and

WHEREAS, at the SDCERS December 2012 Board meeting two approaches to interpreting Pensionable Compensation were identified: (1) narrowly to include only base salary with no added pay elements. (2) broadly to include base salary and any additional pay elements currently allowed in the plan except those pay elements that are specifically excluded in PEPRA legislation; and

WHEREAS, SDCERS staff was made aware of a December 27, 2012, CalPERS circular providing a slightly more expansive interpretation of pensionable Compensation; and

WHEREAS, SDCERS' fiduciary counsel has reviewed two versions of proposed Board Rule 5.60 and agrees that either Board Rule (narrow approach or slightly more expanded definition) would be a reasonable interpretation of pensionable compensation under PEPRA; and

WHEREAS, Airport Authority Staff is seeking direction from the Board as to any opinion on the definition of pensionable earnings which could be shared with the SDCERS Board.

NOW, THEREFORE, BE IT RESOLVED that the Board's preference for establishing the definition of pensionable compensation is:.....; and

BE IT FURTHER RESOLVED that staff share this preference with SDCERS Board and Staff; and

BE IT FURTHER RESOLVED that the Board finds that this Board action is not a "project" as defined by the California Environmental Quality Act (CEQA), Pub. Res. Code Section 21065; and is not a "development" as defined by the California Coastal Act Pub. Res. Code Section 30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a special meeting this 14th day of February, 2013, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

TONY R. RUSSELL
DIRECTOR, CORPORATE SERVICES/
AUTHORITY CLERK

APPROVED AS TO FORM:

BRETON K. LOBNER
GENERAL COUNSEL

San Diego City Employees' Retirement System

California Public Employees'
Pension Reform Act of 2013
("PEPRA")

February 14, 2013

Elaine W. Reagan
General Counsel, SDCERS

What Is PEPRA?

- Gov. Brown's Pension Reform
- Applies to local public retirement systems and their participating employers
- With some exceptions, applicable only to "New Members" hired on or after January 1, 2013.
- New Members defined as:
 - **No Prior Public Retirement System Membership:** Individuals who were never members of a public retirement system in California prior to January 1, 2013; or
 - **Non-Reciprocal Members:** Individuals hired or rehired after Jan. 1, 2013 who withdrew contributions from SDCERS or a reciprocal system or who experienced a "break in service of more than six months" before joining the Airport Authority retirement plan

What Does It Do?

- Eliminates purchase of “nonqualified service” for all Airport Members (current and future)
- Lowers the Retirement Formula
- Caps benefit at 100% of Social Security contribution and benefit base
- Requires at least 50-50 Cost Sharing, with no offsets, after expiration of current MOU
- Limits Working After Retirement for all Airport Members without a 180 day break
- Defines Pensionable Compensation

Definition of “Pensionable Compensation”

- PEPRRA defines “pensionable compensation” as “base pay,” or the “normal monthly rate of pay paid in cash to similarly situated members in the same group or class of employment for services rendered on a full-time basis during normal working hours, pursuant to publicly available pay schedules.”
- PEPRRA then identifies items that are to be excluded from “pensionable compensation,” some of which are:
 - One time/ad hoc payments or bonuses paid in addition to base pay
 - Payment of unused leave
 - Allowances for housing, auto or uniforms
 - Overtime
 - Other compensation the Retirement Board determines should not be pensionable compensation

Pensionable Compensation – New Members Only

- **PEPRA provides the following items in Base Compensation provided for current Airport employees must be included in Pensionable Compensation for New Members:**
 - ❑ Regular salary, including step increases
 - ❑ FLSA premium pay for certain safety members as defined in PEPRA
- **PEPRA requires the following items included in Base Compensation for current Airport employees must be excluded from Pensionable Compensation for New Members:**
 - ❑ Allowances and reimbursements (e.g., car allowance; stipends)
 - ❑ Payments for additional services rendered outside of normal working hours (e.g., potentially standby pay and potentially holiday pay)

Pensionable Compensation – New Members Only

- Other payments that are in Base Compensation for current employees, such as premium pays and differentials, may be included in Pensionable Compensation for New Members only to the extent they are:
 - Paid to similarly situated members of the same group or class
 - Paid for services rendered on a full-time basis
 - Paid only for services rendered during normal working hours
 - Paid pursuant to publicly available pay schedules.

NEXT STEPS

- SDCERS requests the Airport Authority adopt an Ordinance or Resolution defining Pensionable Compensation for its New Members as required by PEPRA, effective as of January 1, 2013
- The SDCERS Board will:
 - Review any Ordinance or Resolution adopted by the Airport
 - Verify that the items included in Pensionable Compensation comply with PEPRA
 - Approve implementation of the Airport's Ordinance or Resolution

QUESTIONS?