

APPROVED
BY THE CITY COUNCIL

JAN 27 1998

OFFICE OF THE
CITY CLERK



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OFFICE OF THE
CITY MANAGER

CITY OF SACRAMENTO
CALIFORNIA

CITY HALL
ROOM 101
915 I STREET
SACRAMENTO, CA
95814-2684

PH 916-264-5704
FAX 916-264-7618
TDD (ONLY) 916-264-7227

January 21, 1998

City Council
Sacramento, CA

Honorable Members in Session:

SUBJECT: PROPOSED BALLOT MEASURE: Charter Amendment to Allow SCERS to Pay Costs to Administer the SCERS System

LOCATION: CITYWIDE

RECOMMENDATION:

It is recommended that the City Council review the attached ballot measure and direct staff to continue work on it for possible placement on the November 1998 ballot.

CONTACT PERSON: Betty Masuoka, Deputy City Manager (264-5738)
Thomas P. Friery, City Treasurer (264-5168)

FOR COUNCIL MEETING OF: January 27, 1998

SUMMARY:

Currently, the City Charter prohibits the City from being reimbursed for the costs of administering the Sacramento Employees Retirement System (SCERS). The proposed ballot measure amends the Charter so that as long as the SCERS system is fully funded, the City can be reimbursed for its future actual costs for administering the system. There would be an annual cap on the maximum that could be reimbursed. The cap would be equal to .15 percent of SCERS assets. It is currently estimated that the city incurs about \$580,000 per year in SCERS administrative costs which are not reimbursed. The Executive Board of the Sacramento Retired City Employees Association voted unanimously

on January 8, 1998 to oppose the proposed measure for reasons described in their letter attached to this report.

COMMITTEE ACTION:

This report was heard by the Law and Legislation Committee at their January 20, 1998 meeting. The Committee approved the staff recommendation and directed staff to forward the report to the full City Council. Committee members expressed interest in actively pursuing recovery of administrative costs as outlined in this report as quickly as possible.

BACKGROUND AND FINANCIAL CONSIDERATIONS:

Each year, the City incurs costs of about \$580,000 to administer the SCERS system. These costs, which are the normal costs of managing and administering the SCERS system are paid by the City general fund and not reimbursed. These costs can be summarized as follows:

Outside Consultants:	
Independent Audit	\$ 25,000
Actuarial Services	20,000
Administrative Services Dept:	
Financial Statement Preparation and Accounting	11,350
Pension Payroll and Tax Reporting	23,500
Retiree Counseling and Administration	120,650
Legal Services	2,950
Investment Services (City Treasurer's Office)	377,000
Total SCERS Administrative Costs Paid by City	<u>\$ 580,450</u>

With respect to the Investment Services currently provided by the City Treasurer, the City Charter would allow for hiring external managers to provide these same services at an estimated cost of \$1.514 million to SCERS. The City Council could withdraw the \$377,000 in general fund support for this activity which would result in a substantial cost increase to SCERS.

The SCERS system currently is valued at about \$409 million. Based on the last actuarial report, reimbursement of administrative costs of \$600,000 (rounded from \$580,450) represents about .15 percent of the fund, and would not, according to the SCERS Actuary have a material impact on the fund.

Staff has met to discuss this issue with the City's labor organizations and representatives from the Sacramento Retired City Employees Association. As stated previously in this report, the Executive Board of that association voted unanimously on January 8, 1998 to oppose the proposed measure. Based on that opposition, staff is recommending postponing putting the proposed measure on the ballot to allow time to work on reaching agreement with the retirees group. The primary area of disagreement is whether this issue should be addressed independently from a number of other issues regarding SCERS such as the possible transfer to PERS, increasing current benefit payments, etc. Staff's position is that this issue should be addressed independently and not as part of a 'package'.

ENVIRONMENTAL CONSIDERATIONS:

This activity does not constitute a 'project' and is therefore exempt from CEQA.

POLICY CONSIDERATIONS:

No Impact on Retiree Benefits. The proposed measure would have no impact on the benefits of current or future retirees.

MBE/WBE

No good or services are being purchased under this report.

Respectfully Submitted,


Betty Masuoka
Deputy City Manager


Thomas P. Friery
City Treasurer

Recommendation Approved:


William H. Edgar
City Manager

DRAFT

RESOLUTION NO.

DRAFT

ADOPTED BY THE SACRAMENTO CITY COUNCIL

ON DATE OF _____

A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF SACRAMENTO, CALIFORNIA, ORDERING THE
SUBMISSION TO THE QUALIFIED ELECTORS OF THE CITY OF A CERTAIN
MEASURE RELATING TO THE RECOVERY OF CITY INCURRED ADMINISTRATIVE
COSTS FOR THE SACRAMENTO EMPLOYEES RETIREMENTS SYSTEM AT THE
GENERAL MUNICIPAL ELECTION TO BE HELD ON _____ AS CALLED
BY RESOLUTION NO. ~~XXXX~~

WHEREAS, a General Municipal Election on Tuesday, has been called by Resolution No. _____
adopted on _____, and

WHEREAS, the City Council desires to submit to the voters at the election a question relating to
the recovery of city administrative costs for the Sacramento Employees Retirement System;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SACRAMENTO,
CALIFORNIA, DOES RESOLVE, DECLARE, DETERMINE AND ORDER AS FOLLOWS:

Section 1. That the City Council, pursuant to its right and authority, does order submitted to the
voters at the General Municipal Election the following question:

The City of Sacramento Employees' Retirement System (SCERS) currently has assets which exceed its liabilities. SCERS does not pay its own administrative costs, the City's General Fund does. Should SCERS reimburse the City's General Fund (which pays for police, fire and other governmental services), for its cost to administer the SCERS system up to a stated maximum and as long as assets exceed liabilities?	YES	
	NO	

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____

Section 2. That the proposed measure submitted to the voters is attached as Exhibit A.

Section 3. That in all particulars not recited in this resolution, the election shall be held and conducted as provided by law for holding municipal elections.

DRAFT

FOR CITY CLERK USE ONLY

RESOLUTION NO.: _____

DATE ADOPTED: _____ **5**

SACRAMENTO RETIRED CITY EMPLOYEES ASSOCIATION

January 15, 1998

TO: Sacramento City Council
Law and Legislation Committee
City Hall
915 I Street
Sacramento, CA 95814

SUBJECT: Proposed Charter Amendment of
Sacramento City Employees Retirement System (SCERS)

SUMMARY:

The Executive Board of the Sacramento Retired City Employees Association (SRCEA) on January 8, 1998, voted unanimously to oppose the current draft of a proposed City Charter change to be placed on the June ballot dealing with the recovery of administrative costs. The reasons for this opposition are set forth in sections below and attached letters. The Board indicated at the same time its support for continuing discussions with the City administration.

BACKGROUND:

The Committee is aware that the present Sacramento City Employees Retirement System was created by a Charter Amendment approved by the voters in 1976. SCERS became a "closed system" and all employees hired after 1977 became members of the California Public Employees Retirement System (PERS). Measure E also required the City to bear the costs of administering SCERS.

A second Charter change was approved by the electorate in June 1989 transferring active police and fire employees from SCERS to PERS. Consequently, the vast majority of people left in SCERS now are the miscellaneous classifications rather than public safety. Local 39 represents these participants remaining in SCERS. SPOA and local 522 represent the public safety retirees.

Today SCERS is in extraordinarily sound financial condition and even has a "surplus" estimated to be more than \$70 million in excess of the system's obligations. In fact, the City of Sacramento has not had to make a cash

P. O Box 246713, Sacramento, CA 95824

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contribution to the system since 1994. The actuary has reported that in all probability the City never will have to contribute again to the retirement system. The working City employees who are in SCERS, however, contribute at the present time about \$1.2 million a year to the system.

Sometime during 1997, the City administration began a review of SCERS and commissioned Towers Perrin to do a consultant study of the system. When the retirees became aware of this, the attached letter of August 1, 1997, was sent to the Mayor and City Manager. We then received a copy of the consultant's initial report and a draft City Charter Amendment to allow the City to recover its costs of administering SCERS. A meeting was held with City staff. The retirees' concerns were set forth in the attached letters dated September 16 and December 27, 1997. Among those concerns was the lack of a maximum amount of money that could be charged to SCERS. This week we received a revised draft of the proposed Charter change that now establishes a percentage limit that can be charged annually against the assets of the retirement system. However, the draft shows an intent to permit retroactive recovery of all administrative costs since the retirement system started. The language of the Measure is ambiguous, but it reads in part, "costs borne by the City prior to approval of the measure shall be borne by the Retirement System..." subject to certain conditions.

DISCUSSION:

Under California law when the voters established SCERS in 1976, the retirement system became a part of the contract of employment with City employees. The contract cannot be changed in favor of the City unless the employees consent or unless something of equal or greater value is given to the employees in exchange for the changes therein made.

The present proposed Charter Amendment, if placed on the ballot and if approved, is only a change by one party to the contract, not both parties, as required by law. The law on this subject was reaffirmed by an appellate court in 1997 when the court ruled against the State of California's efforts to change the funding method of the State retirement system Board of Administration of PERS vs Wilson 61 Cal.Rptr 2d 207 (Cal.App. 3 Dist. 1997). In 1989 the City had its police officers and firefighters vote on the amendment transferring public safety personnel out of SCERS to PERS even though the question was virtually uncontested by the affected employees.

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In addition, the retirees believe that the proposed Charter Amendment under California labor relations law is properly a "meet and confer" issue with the City's recognized employee organizations. There is no way this process can be completed by a February deadline to meet a June election.

We also believe that when Proposition 162 was approved as an initiative measure by voters of the State of California in 1992, its provisions applied to local municipal retirement systems as well as to PERS. It amended Article XVI, Section 17, of the California State Constitution establishing that assets of a public retirement system are trust funds to be held for the exclusive purpose of providing benefits to participants in the retirement system. Since trust funds are involved, neither the City nor the voters can unilaterally appropriate these funds to the City's own use for payment of administration costs.

It should be noted that Towers Perrin, the City's retirement consultant, has pointed out the present SCERS language in the City Charter does not address the issue of what will happen to any surplus which remains when the plan is terminated when no participants are left. The consultant has pointed out that under IRS and ERISA rules the surplus can revert to the City only if specified by the Plan document (City Charter).

The retirees' association Executive Board has tried to point out that there are a number of issues like these which need to be dealt with in addition to the City's concern about recovering administrative costs. Over the last six months, our letters have urged that the two issues of recovering administrative costs and any proposed structural changes to SCERS need to be treated as a single, comprehensive subject. The proposed Charter Amendment has been hastily drafted and fails to address these concerns.

The City should also be aware that the average annual pension of miscellaneous members of SCERS was \$12,306 as of June 30, 1996. The retirees' association has tried unsuccessfully for the last several years to obtain some improved benefits for its members only to be told that these concerns should be addressed in the "meet and confer" process. We are of the opinion that a Charter change also needs to be addressed as part of that same process.

We think that, thus far, the City management staff has been proceeding in disregard of the law on this subject. It should be clearly understood that the Retired City Employees Association is not waiving any legal rights our members have under California law. However, we are willing to discuss this and other matters with the City staff and other City officials. The Executive Board has consistently indicated it is sympathetic to the City's financial needs and could support reasonable changes to the SCERS retirement system.

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Law and Legislation Committee
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RECOMMENDATION:

The Executive Board of the Sacramento Retired City Employees Association respectfully requests the following:

- 1) The Law and Legislation Committee and the City Council take no action to place the proposed Charter Amendment on the June ballot;
- 2) The City Council instruct its City Attorney to prepare a legal opinion on this subject, including the legal issues raised in this memorandum; and
- 3) Representatives of the retirees' association be included, at the earliest date, in all future meetings and negotiations dealing with any proposed changes to the SCERS retirement system.

Respectfully,



Donald Sperling
President, SRCEA

cc: Betty Masuoka, Deputy City Manager
Sam Jackson, City Attorney

SACRAMENTO RETIRED CITY EMPLOYEES ASSOCIATION

August 1, 1997

Honorable Joe Serna, Mayor
City of Sacramento
City Hall
915 I Street, Room 205
Sacramento, CA 95814

William H. Edgar, City Manager
City of Sacramento
City Hall
915 I Street, Room 101
Sacramento, CA 95814

Gentlemen:

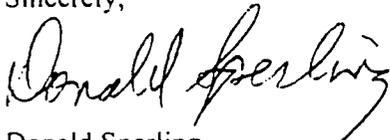
As the newly elected president of the Sacramento Retired City Employees Association, I have frequent occasion to interact with a number of our more than eight hundred members. I find that there seems to be a growing concern about the future of the Sacramento City Employees Retirement System (SCERS) being raised by a segment of the membership.

Part of this questioning, I suspect, may be due to the recent publicity surrounding the State Supreme Court's decision to require the repayment of \$1.4 billion to the Public Employees Retirement System. As you know, it was several years ago that the Governor and the Legislature reduced the State's annual contributions to PERS which led to the litigation.

I continue to respond to inquiries by indicating that I am a member of the City's Administration, Investment and Fiscal Management Board and that we have made no proposals to alter SCERS. I am sure you must know that this is a sensitive issue with those older retirees who are covered by the City Charter provisions approved by the voters in 1976. Since a major part of SCERS financial base came from employee contributions, the retirees believe that they are stakeholders in the system and part of a compact approved by the electorate more than twenty years ago.

In order that I may allay the apprehension of some of the members, would you please tell me if the City administration is proposing any changes to the present SCERS, including possible amendments to the City Charter.

Sincerely,



Donald Sperling
President, SRCEA

cc: David DeCamilla, Chair, AIFMBD
Tom Friery, City Treasurer

P. O. Box 246713, Sacramento, CA 95824

SACRAMENTO RETIRED CITY EMPLOYEES ASSOCIATION

September 6, 1997

Betty Masuoka
Deputy City Manager
City of Sacramento
915 I Street
Sacramento, CA 95814

SUBJECT: Sacramento Retired City Employees Association
(SRCEA) Concerns with Revisions to SCERS

Dear Ms. Masuoka:

In response to my August 1, 1997, letter of inquiry to the City Manager and the Mayor, I received a reply of acknowledgment from City Treasurer Tom Friery. Mike Medema then provided me with a copy of the proposed draft charter changes, the Towers Perrin report "Feasibility of Plan Termination for the Sacramento City Employees' Retirement System - March 1997," David Le Seur's letter of July 24, 1997, and the Consultant Contract.

I was somewhat surprised to discover that proposals to revise SCERS and change the City Charter had been underway for so long without interested parties being apprised of this undertaking. Be that as it may, I was even more surprised by the scope of Options I and II along with the seven "Other Ways to Use the Pension Surplus." I would appreciate receiving copies of any staff documents prepared in response to that March 1997 report.

The Towers Perrin report refers to a surplus of \$71.7 million in SCERS as of June 30, 1996, measured using market value. Since the estimate relates to a time fourteen months ago, I assume this figure has increased significantly and perhaps even approaches \$100 million. What is the staff's current best estimate of the surplus using market value?

In addition, I would like to know how much of the estimated surplus is attributable to the contributions and interest earnings of SCERS members (active and retired) and how much from the City. Retirees believe they are stakeholders in the system and any proposed changes could impact their interests.

I would point out that the separate Towers Perrin report "Actuarial Valuation of SCERS as of June 30, 1996" indicates on page 10 that "if the investment return were - 8.0% next year, the entire surplus would disappear." While this may be an improbable scenario, even a minor decline would result in a major reduction in the surplus.

P. O. Box 246713, Sacramento, CA 95824

Betty Masuoka
September 6, 1997
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In some ways it is unfortunate that there was no input from the retirees or other interested parties in structuring the questions and issues now being posed to the consultant. I would hope that whatever the forthcoming study produces, it first acknowledges that there needs to be an equitable sharing of any surplus by those who contributed to it; namely, the City and the employees.

You asked me to identify the concerns that were important to SRCEA. In addition to the critical issue of utilization of the surplus, I would say that questions which come to mind include:

What are the advantages, disadvantages and costs of including both active and inactive members in PERS?

Is there a need to recover administrative costs if all members are transferred to some other system?

If the Charter is amended to place retirees on annuities with a private insurance company, will the City's full faith and credit guarantee such payments in the future?

What is the staff's rationale for first drafting a Charter change to recover administrative costs while the Towers Perrin comprehensive study has not yet been completed?

With regard to the single issue of the recovery of administrative costs, I believe that the retirees appreciate the City's financial difficulties and would be sympathetic. However, the current draft Charter Amendment does not define how the amount or the method of cost recovery are to be determined. In addition, there is no "cap" and no mechanism for external review or verification. More importantly, I believe that the two issues of recovering administrative costs and any proposed structural changes to SCERS need to be treated as a single, comprehensive subject. Rushing forward to deal with the cost recovery issue in isolation will only engender suspicion and probably opposition.

I understand that qualifying a Charter Amendment for the June 1998 election requires City Council action and approval sometime in February. I would hope that in the next four or five months we could have a dialogue addressing the questions of concern to SRCEA. Frank Mugartegui and I would like to set a meeting with you and Mike Medema to begin that discussion. I will be out of town from September 12 through September 21. My telephone number is 428-5374 and Frank's is 452-6598.

In addition, if the staff is to make any report to the Law and Legislation Committee, I would appreciate being advised in advance, and in my absence, please call Frank.

Betty Masuoka
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The Executive Board of our Association is meeting on September 11, 1997, and I will report back to them what I have learned to date and seek their further direction and guidance.

Very truly yours,



Don Sperling
President
SRCEA

cc: Frank Mugartegui

SACRAMENTO RETIRED CITY EMPLOYEES ASSOCIATION

December 27, 1997

Betty Masuoka
Deputy City Manager
915 I Street
Sacramento, CA 95814

Dear Betty:

Since the Executive Board of the Sacramento Retired City Employees Association (SRCEA) has now had an opportunity to review the information you provided to Frank Mugartegui and me, I would like to give you an update on our position. The Board reiterated that they are extremely concerned with any proposals or actions which will alter the existing Sacramento City Retirement System (SCERS). The next newsletter to the general membership will include a brief article merely describing what we have learned as of this date -- indicating that we will continue to discuss the issue with City staff.

The Executive Board then reaffirmed the position I had set forth in my letter of September 6, 1997, on Page 2, regarding the recovery of administrative costs. While we are sympathetic to the City's financial difficulties, we firmly believe that the two issues of recovering administrative costs and any proposed structural changes to SCERS need to be treated as a single, comprehensive subject. At this point the retirees would probably be opposed to a Charter Amendment which dealt only with administrative cost recovery -- leaving the other issues to a later date. At the same time, we want to support the City in developing an overall proposal dealing with all the issues as a single package.

In anticipation of our next meeting with you on January 7, 1998, I have heard that the recognized employee organizations will also be meeting with City staff. If that is, in fact, true and these are to be "meet and confer" sessions with the labor unions to review the draft ballot measure you provided to us earlier, I am quite alarmed. It would suggest that the City seems to be aiming for a Charter change on the ballot in June without addressing our concerns.

Several weeks ago retired City Attorney Jim Jackson provided Dianne Balter with a court opinion which, I believe, related to the interest of retirement plan participants when there is to be a ballot measure changing the system. I have not heard the final results of that discussion and what the City's position is regarding that case. Also, I have not been able to contact Jim this week and suspect that he is out of town for the holidays.

P. O. Box 246713, Sacramento, CA 95824

Betty Masuoka
December 27, 1997
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In Jim's absence, Executive Board members have been researching the retirement subject. We believe that when Proposition 162 was approved as an initiative measure by the voters in 1992, its provisions applied to local municipal retirement systems as well as to PERS. It amended Article 16, Section 17, of the California State Constitution establishing that the assets of a public retirement system are trust funds to be held for the exclusive purpose of providing benefits to participants in the retirement system. There is provision for allowing recovery of reasonable expenses of administering the system. At the same time, we believe there is a fiduciary responsibility to treat the interests of retirement plan participants as paramount. It would not be prudent, in our opinion, to ask the voters to approve a ballot measure for the recovery of administrative costs as an isolated issue. This leads us to question what role the Administration Investment and Fiscal Management Board has in this process. Article 16, Section 17(b) of the California Constitution states that:

"The members of the retirement board of a public pension or retirement system shall discharge their duties with respect to the system solely in the interest of, and for the exclusive purposes of providing benefits to, participants and their beneficiaries, minimizing employer contributions thereto, and defraying reasonable expenses of administering the system. A retirement board's duty to its participants and their beneficiaries shall take precedence over any other duty."

I trust that these issues can be addressed when we meet next to hear the City's position.

Sincerely,



Don Sperling, President
SRCEA

cc: Bill Edgar
Tom Friery
Mike Medema
Dianne Balter
Jim Jackson