

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

In the Matter of the Application)	CASE NO. 1600
Regarding Excess Assets Accounts, of)	OAH NO. L-1998020282
CITY OF ALBANY, CITY OF)	
BEAUMONT, CITY OF BELL,)	PRECEDENTIAL DECISION
CITY OF CHULA VISTA, EAST BAY)	No. 98-03
DISCHARGERS AUTHORITY,)	
CITY OF EMERYVILLE, CITY OF)	Effective: December 25, 1998
FORT BRAGG, GEORGETOWN)	
FIRE PROTECTION DISTRICT,)	
CITY OF GRAND TERRACE, CITY)	
OF HERCULES, CITY OF INDIO,)	
LAKE VALLEY FIRE PROTECTION)	
DISTRICT, CITY OF LAKEPORT,)	
CITY OF LIVINGSTON, CITY OF)	
LONG BEACH, CITY OF MANTECA,)	
CITY OF MARTINEZ, CITY OF)	
MILLBRAE, CITY OF PLACENTIA,)	
POINT MONTARA FIRE PROTECTION)	
DISTRICT, CITY OF RIVERBANK,)	
CITY OF SOUTH SAN FRANCISCO,)	
CITY OF TRACY, CITY OF TULARE,)	
CITY OF TWENTYNINE PALMS)	
AND CITY OF WEST SACRAMENTO,)	
)	
Respondents,)	
)	
)	
)	

PRECEDENTIAL DECISION

RESOLVED, that the Board of Administration of the California Public Employees' Retirement System hereby adopts as its own decision the Proposed Decision dated [August 20, 1998](#), concerning the matter of the application regarding employer excess asset accounts; RESOLVED, that the Board hereby designates as precedential its decision concerning the Case No. 1600; RESOLVED FURTHER that this Board decision shall be effective 30 days following mailing of the decision.

* * * * *

I hereby certify that on [November 18, 1998](#), the Board of Administration,

California Public Employees' Retirement System, made and adopted the foregoing Resolutions, and I certify further that the attached copy of the administrative law judge's Proposed Decision is a true copy of the decision adopted by said Board of Administration in said matter.

BOARD OF ADMINISTRATION, CALIFORNIA
PUBLIC EMPLOYEES' RETIREMENT SYSTEM
JAMES E. BURTON, CHIEF EXECUTIVE OFFICER

Dated:

BY _____
BARBARA HEGDAL
ASSISTANT EXECUTIVE OFFICER

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of the STATEMENT OF) ISSUES RE: EXCESS ASSETS ACCOUNTS))	CASE NO. 1600
CALIFORNIA PUBLIC EMPLOYEES) RETIREMENT SYSTEM,))	OAH NO. L-1998020282
Petitioner,))	
vs.))	
THE FOLLOWING CITIES AND ENTITIES:) ALBANY, BEAUMONT, BELL, CHULA VISTA)) EAST BAY DISCHARGERS AUTHORITY,)) EMERYVILLE, FORT BRAGG GEORGETOWN)) FIRE PROTECTION DISTRICT, GRAND)) TERRACE, HERCULES, INDIO, LAKE)) VALLEY FIRE PROTECTION DISTRICT,)) LAKEPORT, LIVINGSTON, LONG BEACH,)) MANTECA, MARTINEZ, MILLBRAE,)) PLACENTIA, POINT MONTARA FIRE)) PROTECTION DISTRICT, RIVERBANK,)) SOUTH SAN FRANCISCO, TRACY, TULARE,)) TWENTYNINE PALMS, AND WEST)) SACRAMENTO,)))	
Respondents.))	
_____))	

PROPOSED DECISION

This matter came on regularly for hearing before Roy W. Hewitt, Administrative Law Judge of the Office of Administrative Hearings, in Los Angeles, California on June 1 and 2, 1998, and in Sacramento, California on June 15, 1998.

Richard B. Maness, Esq., Senior Staff Counsel for the California Public Employees Retirement System ("CALPERS"), represented petitioner.

Linda Daube, Esq., Deputy City Attorney, City of Long Beach (“Long Beach”), represented respondent Long Beach, and the remaining respondents were represented by Kirk Uhler, Esq.

Oral and documentary evidence was received, and the record was left open until July 30, 1998 so the parties could submit written closing arguments. The written closing arguments were received, read and considered and the matter deemed submitted on August 3, 1998.

INTRODUCTION

The main issue in this matter is whether Petitioner, CALPERS, properly implemented Senate Bill 1015 (“SB 1015”)¹. An analysis of this question involves two sub-issues: A) Did Petitioner properly define the term “fiscal year” for purposes of initiating the phase-out of surplus asset accounts; and, B) Can surplus asset accounts be used after July 1, 1997 to offset employer contributions, until the funds in the surplus asset accounts are exhausted.

As explained below, after considering all of the evidence in this matter, including the opinions of the experts, the ALJ concludes that petitioner’s implementation of SB 1015 was reasonable and appropriate.

FACTUAL FINDINGS

The Administrative Law Judge makes the following Factual Findings:

1. James E. Burton filed the Statement of Issues in his official capacity as Executive Officer of CALPERS.

2. In 1988, prior to passage of SB 1015, CALPERS established “surplus asset accounts” for local agencies when the agencies had assets in excess of their accrued, actuarial liabilities. Such “surplus assets” were subtracted from the actuarial valuations, segregated in surplus asset accounts, and employer contributions were then calculated independent of the “surplus assets.”

Surplus asset balances could be carried over to succeeding fiscal years and local agencies were allowed to use the surplus assets to offset future employer contributions, when due.

¹ In 1990, SB 1015 was enacted and served to partially amend California Government Code (“Code”) sections 20750.92 and 20750.93. In 1995, Code sections 20750.92 and 20750.93 were renumbered as 20816 and 20817, respectively.

3. Beginning in the early 1990's, petitioner customarily performed public agency asset valuations each spring to determine employer contribution rates for the fiscal year beginning the next calendar year. CALPERS defined fiscal year as the period commencing on July 1 of a particular calendar year and ending on June 30th of the next calendar year (e.g. the 1998 fiscal year runs from July 1, 1998 through June 30, 1999.)

For example, pursuant to CALPERS custom and practice, asset valuations would be performed, say, in March or April of 1998 and then applied during the fiscal year beginning on July 1, 2000.

4. SB 1015 expressly provides: "This bill would, commencing on July 1, 1997, require all assets of an employer to be used in the determination of the employer contribution rate...." CALPERS interpreted this language to mean that, beginning July 1, 1997, the use of surplus asset accounts would be eliminated and that rates applied during the 1997-1998 fiscal year, which commenced on July 1, 1997, would be calculated based on all employer assets.

CALPERS interpretation of SB 1015's language is certainly reasonable, does not violate any recognized accounting principles, and is consistent with CALPERS past accounting practices. Furthermore, petitioner's interpretation is consistent with the language of Code section 20817, which provides: "This section shall remain in effect only until January 1, 1998, and as of that date is repealed...." This statutory language can only be complied with if the phase-out of surplus asset accounts occurred on July 1, 1997. If, on the other hand, the phase-out were not scheduled for completion until July 1, 1998 or later, then there would be a phase-out continuing from January 1, 1998 through the phase-out completion date, in the absence of an enabling statute, the statute having been repealed on January 1, 1998.

5. SB 1015 provides the following phase-out schedule:

"1993-94	20%
1994-95	40%
1995-96	60%
1996-97	80%"

As set forth above, petitioner correctly and reasonably interpreted the time frames to refer to the periods in which rates were actually applied, as opposed to periods during which asset valuations were performed. Accordingly, petitioner properly calculated and applied the rates to complete the phase-out by the mandated July 1, 1997 date. That is to say, commencing July 1, 1997 (the 1997-98 fiscal year), all assets of employers were used to determine employer contribution rates.

6. The legislative history and testimony concerning passage of SB 1015 reveal that there were many discussions concerning passage, implementation and effects of SB 1015. The background information concerning SB 1015 indicate that bill sponsors and supporters did not necessarily interpret its provisions the same. It could be that ambiguities were intentionally left in the bill in order to garner enough support for its passage. Whether by accident, or by design, SB 1015's language pertaining to implementation and phase-out is subject to more than one, reasonable, interpretation, and evidence concerning its background and history fail to help resolve the ambiguities.

7. Beginning in 1991, CALPERS communicated its interpretation of SB 1015's provisions to its members on more than one occasion and has consistently informed its members, via letters, reports, and seminars, that after July 1, 1997, employers will no longer be able to offset contributions. Notwithstanding actual notice of CALPERS implementation of SB 1015, no public groups lodged any complaints, or objections until on or about June 20, 1997, when the City of Long Beach filed its claim that CALPERS did not properly implement SB 1015. Subsequently, other public members joined in the claim. The reason respondents failed to complain prior to 1997 was because there were no significant "surplus assets" to worry about until the California economy began recovering in the mid-90's and substantial surpluses began to occur. These surplus assets caused the City of Long Beach, and others, to focus on how CALPERS was dealing with surplus assets. In other words, until 1995 or 1996, there were not enough surplus assets to fight about. Unfortunately for respondents, CALPERS diligently informed them of its plans concerning implementation of SB 1015. Respondents received actual notice of CALPERS intentions on numerous separate occasions, nevertheless CALPERS was allowed to implement its procedures and operate pursuant to its announced policies for approximately 5 years without complaint. Notwithstanding respondents' assertions that they did not awaken to CALPERS practices until they were actually effected by the practices, the ALJ finds that respondents' objections to CALPERS implementation of SB 1015 were not timely.

LEGAL CONCLUSIONS

Pursuant to the foregoing factual findings, the Administrative Law Judge makes the following conclusions:

1. The Findings set forth above, considered in their totality, establish that CALPERS implementation of SB 1015 is consistent with SB 1015's statutory language and conforms to commonly recognized accounting and actuarial practices. Accordingly, CALPERS interpretation and implementation of SB 1015 shall not be disturbed, especially when, as in this case, respondents failed to timely complain and therefore acquiesced in CALPERS interpretation and implementation.

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ORDER

WHEREFORE, THE FOLLOWING ORDER is hereby made:

Petitioner's petition to uphold CALPERS rejection of respondents' claims for relief is granted and respondents' appeals from the CALPERS rejection(s) are denied.

ROY W. HEWITT
Administrative Law Judge
Office of Administrative Hearings