



Agenda Item No. (3)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole Meeting of August 27, 2021

From: John R. Eberle, Deputy District Engineer
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Subject: **APPROVE ACTIONS RELATIVE TO POST RETIREMENT EMPLOYMENT PURSUANT TO CALIFORNIA PUBLIC EMPLOYEES' PENSION REFORM ACT (PEPRA) – “EXTRA HELP” TECHNICAL EXPERT ASSIGNMENT**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors (Board) appoint Mr. Robert Smith to an “extra help” technical expert assignment in the Engineering Department of the Golden Gate Bridge, Highway and Transportation District (District) for the period beginning September 13, 2021, for an initial period of 18 months, with the option to reappoint him for an additional 18 months, in accordance with the post-retirement employment requirements under section 7522.56 of the California Public Employees’ Pension Reform Act of 2013 and the “extra help” exception to reinstatement to the California Public Employees’ Retirement System (CalPERS) under section 21224 of the Public Employees Retirement Law as presented in the staff report, with the understanding that sufficient funds to finance this appointment are available in the Engineering Department FY 2021/22 operating budget and in the Golden Gate Bridge Physical Suicide Deterrent System and Seismic Retrofit Phase IIIB capital projects. This appointment will also comply with Executive Order N-25-20 and CalPERS guidance regarding appointments of retired annuitants during the COVID-19 state of emergency.

This matter will be presented to the Board of Directors at its August 27, 2021, meeting for appropriate action.

Background

On January 1, 2013, the California Public Employees’ Pension Reform Act of 2013 (PEPRA) went into effect. PEPRA includes a provision that any person receiving a pension from a public retirement system who returns to work for an employer under the same retirement system will cease receiving the retirement benefit and will be reinstated into active membership. PEPRA added

Government code section 7522.55, which provides an exception that permits a member of the California Public Employee's Retirement System (CalPERS) to return to work and continue receiving the retirement benefit without reinstatement to the retirement system if the following conditions are satisfied:

1. The retiree must be limited to working a combined total of 960 hours or less for all participating employers in a fiscal year (pursuant to Executive Order N-25-20 and related CalPERS' Circular Letters, this requirement is currently suspended for retired annuitants appointments made to ensure adequate staffing during the COVID-19 state of emergency).
2. The retiree's hourly rate of pay must neither be less than nor more than the monthly base salary paid by the employer to any of its other employees who perform comparable duties (in accordance with publicly available pay schedules) divided by 173.333.
3. The retiree must not earn any service credit or retirement benefits under the system during the appointment.
4. The appointment must be either because the retiree has skills needed to perform work of a limited duration or to prevent work stoppage during an emergency.
5. The employer's "appointing authority" must approve the appointment.
6. The retiree must not have received any unemployment compensation arising out of any prior employment subject to these requirements with a public employer during the 12-month period preceding his or her appointment.
7. The retiree must not be reemployed within 180 days of his or her retirement, unless certain additional requirements are satisfied.

PEPRA also amended certain sections of the Public Employees Retirement Law (PERL) that specifically limit post-retirement employment of CalPERS members. One of these sections, section 21224, permits the governing body of a CalPERS-contracting agency to appoint a retiree either during an emergency to prevent stoppage of public business or because the retired person has specialized skills needed in performing work of limited duration if certain conditions are satisfied. If the conditions are met, the retiree qualifies for an exception to the 180-day waiting period for reemployment. In addition to satisfying the requirements described above, to qualify as this type of appointment the following conditions must be met:

- a. The contracting agency's governing body must make the appointment.
- b. The appointment must require *specialized* skills or be needed during an emergency to prevent stoppage of public business.
- c. The retiree must not receive any other benefit, incentive, compensation in lieu of benefits, or other compensation in excess of the hourly rate of pay.

Summary

Mr. Robert Smith, who was employed as a Supervising Civil Engineer in the Engineering Department, retired from the District on June 5, 2021, and began receiving retirement benefits from CalPERS. The Engineering Department is working with the Human Resources Department to recruit for the Supervising Civil Engineer position vacated by Mr. Smith.

The Engineering Department is currently managing large and critical capital improvement projects, including the Golden Gate Bridge Physical Suicide Deterrent Project and the Seismic Retrofit Phase IIIB/Suspension Bridge Project.

The Engineering Department has been relying on Mr. Smith's specialized skills, knowledge, expertise and experience in construction management and administration to assure contractors' compliance with contract requirements on all on-going construction projects. During his employment with the District, Mr. Smith performed duties of the Resident Engineer during construction of the Golden Gate Bridge Seismic Retrofit Phase 2/South Approach Structures, the Golden Gate Bridge Seismic Retrofit Phase 3A/North Anchorage Housing, and the Golden Gate Bridge Physical Suicide Deterrent.

Mr. Smith's knowledge of the Golden Gate Bridge; numerous permit conditions governing construction work on the Bridge; his knowledge of technical standards and federal, state and District's rules and regulations applicable to construction contracts; as well as his expertise in the development and application of construction technical specifications have been instrumental in the Engineering Department's delivery of the District's capital improvement projects. Important tasks performed by Mr. Smith included evaluating contractor cost proposals, negotiating and writing contract change orders, performing constructability reviews, writing contract technical and administrative specifications, evaluating construction schedules, evaluating and responding to claims.

It is critical to the delivery of the Golden Gate Bridge Physical Suicide Deterrent and the Phase IIIB Seismic Retrofit Projects that Mr. Smith be appointed in an "extra help" technical expert role to provide his specialized skills and expertise. The District Engineer recommends that Mr. Smith be appointed to perform such special work of an "extra help" technical expert subject to the conditions listed in this report, to assist with these large scale critical Bridge projects. Further, his appointment is necessary to ensure adequate staffing for the Engineering Department during the COVID-19 state of emergency.

Under the law, the appointment of Mr. Smith requires Board approval and a finding by the Board that he has specialized skills needed to perform work of limited duration, and that this appointment will meet all of the other requirements for the "extra help" appointment exception to CalPERS reinstatement.

Mr. Smith's appointment satisfies the conditions under PEPRA and PERL listed above for post-retirement employment without CALPERS reinstatement as follows:

1. The closest related pay for performing this "extra help" technical expert assignment is the maximum base salary for the Supervising Civil Engineer position. Thus, Mr. Smith's hourly pay rate during the appointment will neither be less nor more than the monthly base salary paid by the District to any of its other employees who perform comparable duties in accordance with publicly available District compensation for the Supervising Civil Engineer position divided by 173.333.
2. He will not earn any CalPERS service credit or retirement benefits under the system during his appointment.

3. He has the specialized skills needed to perform the critical duties of this “extra help” technical expert assignment.
4. This appointment is made by the District Board, which is the District’s governing body.
5. He has not received any unemployment compensation arising from any prior employment subject to these requirements with a public employer during the last 12 months.
6. He will not receive any additional benefit, compensation in lieu of benefits or other compensation in excess of the hourly rate of pay.

The above stated conditions of Mr. Smith’s appointment satisfy the conditions of PEPR and PERL for an appointment to begin less than 180 days after Mr. Smith’s retirement from his position with the District. The attached Resolution, for adoption by the Board of Directors, will be submitted to CalPERS, with a copy of the applicable pay schedule and job description, as required to implement this appointment.

Fiscal Impact

Funds for this appointment to the “extra help” technical expert assignment are available in the FY 21/22 Engineering Department operating budget and in the Golden Gate Bridge Suicide Deterrent System and Phase IIIB Seismic Retrofit capital projects, and will be allocated in the FY 22/23 Engineering Department operating and capital budgets.