

COUNCIL ACTION
EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE: March 2, 2011

ORIGINATING DEPARTMENT: Mayor's Office

SUBJECT: Indemnification of Trustees of the San Diego City Employees' Retirement System

COUNCIL DISTRICT(S): All

CONTACT/PHONE NUMBER: Jay M. Goldstone, 619-236-7080

REQUESTED ACTION:

The San Diego Employees' Retirement System (SDCERS) is governed by a 13-member Board of Administration (Trustees) who are responsible for the prudent administration of retirement benefits for City employees, and for overseeing the investment portfolio of the retirement system's trust fund. Certain board members are appointed by the Mayor and confirmed by the City Council. Members of the Board have requested that the City affirm its obligation to defend and indemnify SDCERS Trustees under Government Code sections 825 and 995 et. seq.

STAFF RECOMMENDATION:

Consider the request and provide direction to the City Attorney regarding preparation of a Resolution affirming the City's obligations to defend and indemnify SDCERS Trustees per California Government Code.

EXECUTIVE SUMMARY OF ITEM BACKGROUND:

The San Diego Employees' Retirement System (SDCERS) is governed by a 13-member Board of Administration (Trustees). Seven of these members are appointed by the Mayor with City Council confirmation. One Ex-Officio member is appointed by the Mayor, and five members are elected by their representative membership organizations. This Board is responsible for the prudent administration of retirement benefits for City employees, and for overseeing the investment portfolio of the retirement system's trust fund.

Given the complex and controversial nature of decisions brought to the SDCERS Board for consideration, and the numerous threats of litigation associated with those decisions, the Board has requested that the City restate and affirm the City's obligations to defend and indemnify SDCERS Trustees per California Government Code. Recognizing the public service provided by Board members on a volunteer basis, their request for this reassurance is docketed for Rules Committee consideration.

(for purposes of these code provisions, Board members are considered "employees")

California Government Code Section 995.

Except as otherwise provided in Sections 995.2 and 995.4, upon request of an employee or former employee, a public entity shall provide for the defense of any civil action or proceeding brought against him, in his official or individual capacity or both, on account of an act or omission in the scope of his employment as an employee of the public entity.

California Government Code Section 825

(a) Except as otherwise provided in this section, if an employee or former employee of a public entity requests the public entity to defend him or her against any claim or action against him or her for an injury arising out of an act or omission occurring within the scope of his or her employment as an employee of the public entity and the request is made in writing not less than 10 days before the day of trial, and the employee or former employee reasonably cooperates in good faith in the defense of the claim or action, the public entity shall pay any judgment based thereon or any compromise or settlement of the claim or action to which the public entity has agreed.

As noted, there are exceptions under which the City may refuse to provide for the defense of a civil action or proceeding brought against an employee or former employee if the City determines any of the following stated in Code Section 995.2:

(1) the act or omission was not within the scope of the board member's duties; (2) the board member acted or failed to act because of actual fraud, corruption, or actual malice; (3) the defense of the action by the public entity would create a conflict of interest between the public entity and the board member; (4) an action is brought by the public entity to remove, suspend, or otherwise penalize the board member; or (5) an action or proceeding is brought by the public entity against the board member as an individual and not in his official capacity.

FISCAL CONSIDERATIONS:

EQUAL OPPORTUNITY CONTRACTING INFORMATION (IF APPLICABLE):

PREVIOUS COUNCIL and/or COMMITTEE ACTION (describe any changes made to the item from what was presented at committee):

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Members of the Board of Trustees of the San Diego City Employees' Retirement System