



Board of Retirement Regular Meeting

Sacramento County Employees' Retirement System

Agenda Item 14

MEETING DATE: November 20, 2019

SUBJECT: Amendments to SCERS' Bylaws

SUBMITTED FOR: ___ Consent X Deliberation and Action ___ Receive and File

RECOMMENDATION

Staff recommends the Board adopt certain amendments to SCERS' Bylaws. Most of the recommended amendments are typographical and non-substantive, but two address substantive issues: (1) updating the list of acceptable proofs of birth, and (2) recognizing SCERS' acceptance of electronic member signatures.

PURPOSE

This item supports the 2019-20 Strategic Management Plan by refining SCERS' Bylaws to promote compliance with state law and transparency to stakeholders.

DISCUSSION

Staff recommends the Board approve the Bylaw amendments attached hereto as Exhibit A (redlined version) and Exhibit B (clean version).

For the most part, the proposed amendments are non-substantive. Specifically, the proposed amendments correct typographical and formatting errors, and establish uniform naming conventions (i.e., by using "Chief Executive Officer" instead of "Retirement Administrator" throughout). The proposed amendments also adjust some pronouns to promote gender neutrality. However, the proposed amendments do include two items of substance.

First, staff recommends amending Section 28 to update the list of acceptable proofs of birth date. In particular, Section 28 should be amended to specify that California Real ID's and California driver's licenses are acceptable forms of proofs.

Second, staff recommends adding a new Section 26.1 to address SCERS' acceptance of electronic signatures. In September 2019, the Board approved a policy that authorizes SCERS to accept electronic member signatures if submitted through one of two software systems, Ariel and DocuSign. (As of this writing, SCERS has yet to actually implement an electronic signature software system or to receive electronic member signatures.) Under Government Code sections

31525 and 31527, it is arguably better practice to have the Board of Supervisors approve SCERS' use and acceptance of electronic signatures. The proposed Section 26.1 would provide a vehicle for obtaining such approval. Notably, the proposed Section 26.1 gives the Board of Retirement authority to approve other electronic signature software systems going forward, without re-submittal of the issue to the Board of Supervisors.

ATTACHMENTS

- Exhibit A – Redlined version of SCERS Bylaws with proposed amendments
- Exhibit B – Clean version of SCERS Bylaws with proposed amendments

Prepared by:

Reviewed by:

/S/

/S/

Stephen Lau
General Counsel

Eric Stern
Chief Executive Officer

SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM
BOARD OF RETIREMENT
BYLAWS

CHAPTER 1

ADMINISTRATION

Sec. 1. Retirement System: Definition and Title-

The Retirement System is that combination of elements such as the assets, liabilities, and the Retirement Board, arising out of and subject to the County Employees' Retirement Law of 1937 (Government Code Section 31450 et seq.). The Retirement System, as made applicable to Sacramento County by provisions of said Retirement Law and Ordinance No. 283 passed April 30, 1941, shall be known as the Sacramento County Employees' Retirement System. Henceforth, all property shall be held in the name of the Retirement System and all liabilities shall be incurred in the name of the Retirement System.

Sec. 1.1. Retirement Association: Organization

There is organized in Sacramento County a retirement association of active, inactive and retired members as provided in Government Code Section 31450 et seq., which shall be members of and participants in the benefit plan administered by the Retirement System.

Sec. 1.2. Retirement Board

The Retirement Board is the governing body for both the Retirement System and the benefit plan administered by the Retirement System.

Sec. 1.3. Bylaws

These Bylaws as adopted herein pursuant to Government Code Sections 31525, 31526, and 31527 are intended to be the rules and regulations governing the operation of the Retirement Board and the administration of the Retirement System.

Sec. 2. President

At the first regular meeting in July of each year, or as soon thereafter as possible, the Retirement Board shall elect one of its members President for a term of one year, or until a successor is duly elected and qualified. The President of the Retirement Board shall preside over the meetings of the Board, shall preserve order and decorum, and shall decide questions of order, subject to appeal to the Board. The President shall be entitled to vote on all matters before the Board.

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Sec. 3. Vice President

At the first regular meeting in July of each year, or as soon thereafter as possible, the Retirement Board shall elect one of its members Vice President for a term of one year, or until a successor is duly elected and qualified. In the absence of the President from any meeting of the Board, the Vice President shall perform all the duties of the President at the meeting as specified in Section 2.

Sec. 4. Vacancy of Office

If either the President or Vice President for any reason fails to complete a term, the Retirement Board shall elect a successor for the balance of the unexpired term at its next regular meeting, or as soon thereafter as possible.

Sec. 5. ~~Retirement Administrator~~Chief Executive Officer

The Board shall appoint a Chief Executive Officer, and the Chief Executive Officer shall act as ~~Retirement Administrator and~~ Secretary to the Board.

CHAPTER 2

MEETINGS

Sec. 6. Regular Meetings

Regular meetings of the Retirement Board shall be held at a time and place set by resolution of the Retirement Board in accordance with Government Code Sections 54954, 54954.2, and 54954.3.

Sec. 7. Special Meetings

Special meetings of the Retirement Board may be called by the President or a majority of the members of the Board, as provided in Section 54956 of the Government Code of the State of California.

Sec. 8. Order of Business

The regular order of business of the Retirement Board shall be as determined by the Board and as set forth in the Agenda for its meetings.

Sec. 9. Quorum

Five (5) members of the Retirement Board shall constitute a quorum. No act of the Retirement Board shall be valid unless a majority of the total membership of the Board concur therein.

Sec. 10. Succession of Officers

In the event the President is absent, the Vice President shall act as President.

Sec. 11. Communications

Any member of the Association and any member of the public shall have the opportunity at any regular meeting to directly address the Retirement Board on items of interest to the membership and/or the public which are not on the agenda of the regular meeting and which are within the jurisdiction of the Retirement Board subject to the provisions of Government Code Section 54954.3.

Sec. 12. Minutes

The ~~Retirement Administrator~~Chief Executive Officer shall cause to be recorded in the minutes the time and place of each meeting of the Retirement Board, the names of members present, all official acts of the Retirement Board, and the votes of each member of the Board except where the action is unanimous. If requested by a member, the reasons for the member's vote shall also be recorded. The proposed minutes for each meeting shall be prepared and distributed to the Board members as soon as possible after each meeting for approval and adoption as official minutes at the next regular Board meeting. The officially adopted minutes, or a copy thereof, submitted and

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signed by the ~~Retirement Administrator~~ Chief Executive Officer and signed by the President, shall be a part of the permanent records of the Retirement Board. A copy of the official minutes for each meeting shall be given to each member of the Retirement Board.

Sec. 13. Rules of Order

The President shall rule on all procedural matters or questions not specifically covered by these rules, subject to appeal to all Board members present.

Sec. 14. Committees

The President shall have the authority to appoint -Committees on an as needed basis to assist the Board. The committees shall consist of not less than three Board members and shall designate one as Chairperson. The Committee shall act in an advisory capacity to the Board on the matters specified by the Board and included in the Committee charter. The Committee meetings shall be called by the Committee Chairperson or the Board President.

CHAPTER 3

MEMBERSHIP

Sec. 16. Regular Employees/Permanent Part-time Employees-

All regular employees shall become members of the Retirement System on the first day of their employment in a position requisite for membership, except as otherwise provided herein.

A regular employee hired after turning sixty (60) years of age may waive membership in the retirement System upon proper application to the Retirement Board.

As used in these Regulations, "Regular Employee" means an employee occupying a full-time position or permanent part-time position and paid a salary as provided in the annual salary ordinance.

Sec. 17. Regular Pay

The retirement contributions of regular employees shall be based upon regular salary in a two-week pay period as provided in the annual salary ordinance.

Sec. 18. Exclusions-

In accordance with Subdivision (e) of Section 31527 of the Government Code, temporary, seasonal, intermittent, and part-time employees who work less than the full standard hours required in the District or County, are excluded from membership in the Sacramento County Employees' Retirement System. Notwithstanding the foregoing, any regular employee whose employment is changed to part-time shall continue to be a member and make contributions on a pro rata basis.

- a. "Temporary Employee," as used in these Regulations, means any employee whose position is paid on a per diem basis until he or she is reported to the County Auditor as a regular employee by the head of the Department or Agency by which he or she is employed.
- b. "Seasonal or Intermittent Employee," as used in these Regulations, means an employee whose service is not regular in nature, but periodic, and recurrent at intervals.
- c. "Part-time Employees," as used in these Regulations, means an employee whose services are not required for the full standard hours required by the County or District.

Sec. 19. Minimum Compensation-

Employees receiving compensation amounting to less than \$80 per month, including maintenance valued according to the schedule adopted by the Board of Supervisors in the current Salary Ordinance, are hereby excluded and exempted from membership in the Retirement System.

For the purpose of these Regulations, any member of the Retirement System whose salary is reduced to an amount less than \$80 per month may discontinue his membership in the Retirement System and withdraw his accumulated contribution if he or she so elects in writing to the Retirement Board. If he or she does not file such written notice with the Board within 180 days after the effective date of such reduction in salary, he or she shall remain a member.

Sec. 20. Compensation Earnable or -Pensionable Compensation

The amount of retirement contributions from a member or an employer, shall be determined according to the County Employees' Retirement law of 1937 (CERL) or Public Employees' Pension Reform Act of 2013 (PEPRA), as applicable.

Sec. 21. Installment Payments of Contributions Redeposit-

Under unusual circumstances, the Board may authorize the deposit or redeposit of contributions required to be made by installment payments over a period of time not to exceed the time for which the member has elected to receive credit, or a longer period as determined by the Board. In no event shall any installment payment be less than twenty-five dollars (\$25) biweekly.

CHAPTER 4
MISCELLANEOUS

Sec. 26. Sworn Statement-

Every member of the Sacramento County Employees' Retirement System shall, upon his entry into the Retirement System, file with the Retirement Board a sworn statement in the manner and form prescribed by the Retirement Board.

Sec. 26.1 Electronic Signatures

The Board of Retirement may use and accept a document requiring a signature that is submitted by the member or a beneficiary using an electronic signature, if the document and electronic signature are submitted using technology the Board deems sufficient, as set forth in policies adopted by the Board, to ensure its integrity, security, and authenticity. The Board may also adopt policies setting conditions, restrictions, and/or parameters on the use and acceptance of such signatures. A document submitted pursuant to the Board-adopted policy shall be given the same force as a signed, valid original document.

Sec. 27. Prior Service-

Pursuant to Sections 31643 and 31644 of the Government Code, "prior service" means all service rendered by an employee prior to July 1, 1941, regardless of interruptions. "Prior service" does not include any time for which no compensation was received and no retirement service credit shall be given for such time.

Sec. 28. Proof of Birth-

All members of the Retirement System upon making application for any retirement allowance, or when requested, shall submit proof of birth that indicates the member's exact date of birth. If there is any uncertainty or conflict in the available evidence, the Board shall determine the member's date of birth on the basis of such evidence as the Board deems most reliable. All retirement calculations shall be based on the date of birth as determined by the Board. Proof of birth may be established by a California Real ID, valid California driver's license, birth certificate, marriage license, armed forces discharge, old insurance papers, baptismal certificate, or an entry in a family Bible. The Board may accept any of the above documents as proof of birth or any other document which the Board deems appropriate. A copy or extract of any paper or document accepted by the Board as proof of birth shall become a permanent part of the member's retirement record.

Sec. 29. Hearings-

- a. Any member of the Retirement Association shall be entitled to request a hearing before the Retirement Board on any matter directly affecting the retirement rights or benefits of the member. Upon receiving such a request, the ~~Retirement Administrator~~Chief Executive Officer shall set the request for hearing before the

Retirement Board and shall give notice to the member so requesting of the date, time, and place of hearing of the request

- b. The Retirement Board may, on its own motion, set any matter for hearing which will directly affect the retirement rights or benefits of a specific member of the Association. Notice shall be given to the affected member of the time and place of the hearing.
- c. Nothing in these Regulations shall prevent the Retirement Board from considering and taking action on any application for retirement or any other matter affecting the individual rights or benefits of any member at a regular or special meeting as provided in Sections 6 and 7.
- d. Nothing herein shall prevent any member of the Retirement Association or any member of the public from having the opportunity at any regular meeting of the Retirement Board to directly address the Retirement Board as provided in Section 11.

CHAPTER 5

DISABILITY RETIREMENT

Sec 30. Disability Retirement Procedures

- a. The Board of Retirement (Board) may promulgate disability retirement procedures for the purpose of administering and making determinations on applications for disability retirement benefits submitted to SCERS by a member or other authorized person.
- b. The purpose of the disability retirement procedures is to efficiently process disability applications, and when a hearing is held, ensure the applicant has notice of the hearing and an opportunity to present his/her case.
- c. SCERS will periodically review the procedures to ensure that members are treated fairly by the process and with due process of law.
- d. SCERS will ensure that the disability procedures and the disability handbook are prepared, updated and readily available to members of SCERS or the public at large.

Sec. 31. Definitions

The disability retirement procedures will include definitions of key terms designed to assist the member in successfully preparing a disability application and proceeding through the conclusion of the determination process.

Sec. 32. Overview of SCERS Disability Retirement Application Process

- a. Application - A member, or other authorized individual, must file a completed and signed application for disability retirement benefits with SCERS to begin the review and determination process, including authorizing SCERS to obtain relevant records from medical providers and employers.
- b. Records Release - Every member to whom an application for disability retirement benefits pertains shall execute and deliver to SCERS one or more written consents for release of the member's medical records and other pertinent information to SCERS, and provide a listing of names and addresses of all the member's medical providers.
- c. Medical Records - Once the application is accepted by SCERS, the applicant is responsible for arranging for any and all medical records and reports the applicant wants SCERS to consider in making a determination on the application to be submitted to SCERS in a timely manner. SCERS may request/obtain additional records from applicant's medical providers, workers' compensation files, etc. if and as necessary.

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- d. Employer Information – SCERS will request records and information from the applicant’s employer including job duties and requirements, job performance, Workers’ Compensation claims, reasonable accommodation, etc.
- e. Medical Evaluations - The Board may appoint one or more medical advisors (MA) to assist in analyzing medical records related to applications for disability retirement benefits. The MA will provide a *Report and Recommendation* to the Board. In certain circumstances, to assist the MA in completing the *Report and Recommendation*, the MA may request that the applicant submit to one or more physicians for an Independent Medical Evaluation (IME). If the matter is referred for an IME, the independent medical evaluator will provide the *Report and Recommendation* to SCERS.
- f. Determination - The application for disability retirement, employment records and medical reports and opinions will form the basis for making a determination on the application and, if necessary, submission to a hearing officer.

Sec. 33. Medical Advisor’s Report and Recommendation

The *Report and Recommendation* shall address the following issues in recommending a determination on the disability retirement application:

- a. Whether the member is physically or mentally incapacitated from substantially performing the usual duties of his or her job with/or without accommodation.
- b. Whether the incapacity is permanent.
- c. Whether the incapacity is service-connected (if applicable).
- d. Whether the member is able to perform other job duties based on restrictions imposed by the member’s condition(s).
- f. Whether the member’s physical or mental incapacity was continuous from the date the member discontinued service to the time the application for disability retirement was filed with SCERS.

SCERS will provide the *Report and Recommendation* to all parties along with a *Request for Hearing* Form.

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-Sec.34. Request for Hearing

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Should any party wish to request a hearing before a hearing officer, he or she must complete, sign and return the *Request for Hearing* Form. If a hearing is not requested, staff will prepare and

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submit a recommended determination on the disability retirement application for the Board's consideration and action.

Sec. 35. Scheduling the Hearing

If a hearing is requested, SCERS shall be responsible for scheduling hearing dates, and shall make a reasonable effort to coordinate mutually acceptable hearing dates with the applicant or the applicant's attorney.

Sec. 36. Hearing Procedures

The disability retirement procedures will include rules for preparing for the hearing, the presentation of evidence to a Hearing Officer, and the process by which a Hearing Officer will submit a *Proposed Findings of Fact and Recommended Decision* for consideration by the Board.

Sec. 37. Subpoena Powers

The Board may issue subpoenas and subpoenas duces tecum. Committees shall not have this power. Subpoenas shall be signed by the President or ~~Secretary of the Board~~ the Chief Executive Officer. The Board may delegate its subpoena power, and does so to the administrative law judges of the Office of Administrative Hearings. Subpoenas issued shall be transmitted to the party requesting the subpoena, which party shall have the sole responsibility for serving and enforcing the subpoena.

Sec. 38. Burden of Proof

The applicant has the burden of proving by a preponderance of the evidence each affirmative issue on which the application depends. If the applicant seeks to assert one or more of the legislative presumptions afforded by Government Code Sections 31720.5 (heart trouble), 31720.6 (cancer), 31720.7 (blood-borne infectious disease), or 31720.9 (illness due to exposure to biochemical substances), then the applicant first must establish his or her entitlement to invoke the asserted presumption by offering prima facie evidence of each foundational element required by the applicable Government Code section(s), and the presumption(s) so invoked shall be rebuttable as provided in the applicable section(s).

Sec.39. Board Consideration of Recommended Decisions

The disability retirement procedures will include rules for the Board's consideration of a *Proposed Findings of Fact and Recommended Decision* from a Hearing Officer, a *Report and Recommendation* from a medical advisor and/or independent medical evaluator, or a staff recommendation.

In considering a *Proposed Findings of Fact and Recommended Decision* from a hearing officer, the Board shall have the following options:

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- a. Approve and adopt the hearing officer's *Proposed Findings of Fact and Recommended Decision*; or
- b. Require a transcript or summary of all the testimony, plus all other evidence received by the hearing officer. Upon the receipt thereof the Board of Retirement shall take such action as in its opinion is indicated by such evidence; or
- c. Refer the matter back to the hearing officer with instructions for further review; or
- d. Set the matter for hearing before itself using the same procedures applicable to hearings by a hearing officer insofar as possible. At such hearing the Board shall hear and decide the matter as if it had not been referred to the hearing officer.

Sec. 40. Dismissal of Application

The failure of an applicant to diligently pursue an application, including the submission of any and all required written documentation, may result in the dismissal of the application. Such a dismissal may cause the loss of certain monetary benefits or other rights and privileges. Upon the Board's own motion or a recommendation by the ~~CEO~~Chief Executive Officer, and notice to the applicant, the Board may dismiss any application which the Board finds, upon consideration of the facts presented to it, is not being diligently pursued.

Sec. 41. Final Administrative Action

The Board's determination on any application for disability retirement shall be deemed to be a final and conclusive administrative action subject to judicial review.

Sec. 42. Judicial Review

The disability retirement procedures shall specify that action to seek judicial review of the Board's determination is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure. Any such petition must be filed no later than the ninetieth (90th) day following receipt of written notice from SCERS of the Board's determination.

SACRAMENTO COUNTY EMPLOYEES' RETIREMENT SYSTEM
BOARD OF RETIREMENT
BYLAWS

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Sec. 2. President

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Sec. 6. Regular Meetings

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Sec. 16. Regular Employees/Permanent Part-time Employees

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As used in these Regulations, "Regular Employee" means an employee occupying a full-time position or permanent part-time position and paid a salary as provided in the annual salary ordinance.

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In accordance with Subdivision (e) of Section 31527 of the Government Code, temporary, seasonal, intermittent, and part-time employees who work less than the full standard hours required in the District or County, are excluded from membership in the Sacramento County Employees' Retirement System. Notwithstanding the foregoing, any regular employee whose employment is changed to part-time shall continue to be a member and make contributions on a pro rata basis.

- a. "Temporary Employee," as used in these Regulations, means any employee whose position is paid on a per diem basis until he or she is reported to the County Auditor as a regular employee by the head of the Department or Agency by which he or she is employed.
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Sec. 26. Sworn Statement

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- b. The Retirement Board may, on its own motion, set any matter for hearing which will directly affect the retirement rights or benefits of a specific member of the Association. Notice shall be given to the affected member of the time and place of the hearing.
- c. Nothing in these Regulations shall prevent the Retirement Board from considering and taking action on any application for retirement or any other matter affecting the individual rights or benefits of any member at a regular or special meeting as provided in Sections 6 and 7.
- d. Nothing herein shall prevent any member of the Retirement Association or any member of the public from having the opportunity at any regular meeting of the Retirement Board to directly address the Retirement Board as provided in Section 11.

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- a. Application - A member, or other authorized individual, must file a completed and signed application for disability retirement benefits with SCERS to begin the review and determination process, including authorizing SCERS to obtain relevant records from medical providers and employers.
- b. Records Release - Every member to whom an application for disability retirement benefits pertains shall execute and deliver to SCERS one or more written consents for release of the member's medical records and other pertinent information to SCERS, and provide a listing of names and addresses of all the member's medical providers.
- c. Medical Records - Once the application is accepted by SCERS, the applicant is responsible for arranging for any and all medical records and reports the applicant wants SCERS to consider in making a determination on the application to be submitted to SCERS in a timely manner. SCERS may request/obtain additional records from applicant's medical providers, workers' compensation files, etc. if and as necessary.

- d. Employer Information – SCERS will request records and information from the applicant’s employer including job duties and requirements, job performance, Workers’ Compensation claims, reasonable accommodation, etc.
- e. Medical Evaluations - The Board may appoint one or more medical advisors (MA) to assist in analyzing medical records related to applications for disability retirement benefits. The MA will provide a *Report and Recommendation* to the Board. In certain circumstances, to assist the MA in completing the *Report and Recommendation*, the MA may request that the applicant submit to one or more physicians for an Independent Medical Evaluation (IME). If the matter is referred for an IME, the independent medical evaluator will provide the *Report and Recommendation* to SCERS.
- f. Determination - The application for disability retirement, employment records and medical reports and opinions will form the basis for making a determination on the application and, if necessary, submission to a hearing officer.

Sec. 33. Medical Advisor’s Report and Recommendation

The *Report and Recommendation* shall address the following issues in recommending a determination on the disability retirement application:

- a. Whether the member is physically or mentally incapacitated from substantially performing the usual duties of his or her job with/or without accommodation.
- b. Whether the incapacity is permanent.
- c. Whether the incapacity is service-connected (if applicable).
- d. Whether the member is able to perform other job duties based on restrictions imposed by the member’s condition(s).
- f. Whether the member’s physical or mental incapacity was continuous from the date the member discontinued service to the time the application for disability retirement was filed with SCERS.

SCERS will provide the *Report and Recommendation* to all parties along with a *Request for Hearing Form*.

Sec.34. Request for Hearing

Should any party wish to request a hearing before a hearing officer, he or she must complete, sign and return the *Request for Hearing Form*. If a hearing is not requested, staff will prepare and submit a recommended determination on the disability retirement application for the Board’s consideration and action.

Sec. 35. Scheduling the Hearing

If a hearing is requested, SCERS shall be responsible for scheduling hearing dates, and shall make a reasonable effort to coordinate mutually acceptable hearing dates with the applicant or the applicant's attorney.

Sec. 36. Hearing Procedures

The disability retirement procedures will include rules for preparing for the hearing, the presentation of evidence to a Hearing Officer, and the process by which a Hearing Officer will submit a *Proposed Findings of Fact and Recommended Decision* for consideration by the Board.

Sec. 37. Subpoena Powers

The Board may issue subpoenas and subpoenas duces tecum. Committees shall not have this power. Subpoenas shall be signed by the President or the Chief Executive Officer. The Board may delegate its subpoena power, and does so to the administrative law judges of the Office of Administrative Hearings. Subpoenas issued shall be transmitted to the party requesting the subpoena, which party shall have the sole responsibility for serving and enforcing the subpoena.

Sec. 38. Burden of Proof

The applicant has the burden of proving by a preponderance of the evidence each affirmative issue on which the application depends. If the applicant seeks to assert one or more of the legislative presumptions afforded by Government Code Sections 31720.5 (heart trouble), 31720.6 (cancer), 31720.7 (blood-borne infectious disease), or 31720.9 (illness due to exposure to biochemical substances), then the applicant first must establish his or her entitlement to invoke the asserted presumption by offering prima facie evidence of each foundational element required by the applicable Government Code section(s), and the presumption(s) so invoked shall be rebuttable as provided in the applicable section(s).

Sec.39. Board Consideration of Recommended Decisions

The disability retirement procedures will include rules for the Board's consideration of a *Proposed Findings of Fact and Recommended Decision* from a Hearing Officer, a *Report and Recommendation* from a medical advisor and/or independent medical evaluator, or a staff recommendation.

In considering a *Proposed Findings of Fact and Recommended Decision* from a hearing officer, the Board shall have the following options:

- a. Approve and adopt the hearing officer's *Proposed Findings of Fact and Recommended Decision*; or

- b. Require a transcript or summary of all the testimony, plus all other evidence received by the hearing officer. Upon the receipt thereof the Board of Retirement shall take such action as in its opinion is indicated by such evidence; or
- c. Refer the matter back to the hearing officer with instructions for further review; or
- d. Set the matter for hearing before itself using the same procedures applicable to hearings by a hearing officer insofar as possible. At such hearing the Board shall hear and decide the matter as if it had not been referred to the hearing officer.

Sec. 40. Dismissal of Application

The failure of an applicant to diligently pursue an application, including the submission of any and all required written documentation, may result in the dismissal of the application. Such a dismissal may cause the loss of certain monetary benefits or other rights and privileges. Upon the Board's own motion or a recommendation by the Chief Executive Officer, and notice to the applicant, the Board may dismiss any application which the Board finds, upon consideration of the facts presented to it, is not being diligently pursued.

Sec. 41. Final Administrative Action

The Board's determination on any application for disability retirement shall be deemed to be a final and conclusive administrative action subject to judicial review.

Sec. 42. Judicial Review

The disability retirement procedures shall specify that action to seek judicial review of the Board's determination is governed by the provisions of Section 1094.6 of the California Code of Civil Procedure. Any such petition must be filed no later than the ninetieth (90th) day following receipt of written notice from SCERS of the Board's determination.