



Meeting Date: April 24, 2019

Agenda Item: # 9

## AGENDA SUMMARY REPORT

### **SUBJECT:**

Adoption of Resolution No. 2019-06 Authorizing the General Manager to Conduct a Section 218 Social Security Benefits Division Election.

### **SUMMARY:**

At its January 30, 2019 Board meeting, the Board authorized the General Manager to begin the Section 218 Agreement process for Social Security only. MTA has an existing Medicare only Section 218 Agreement which became effective November 1, 2000.

The first step in the process is adoption of a resolution which will enable MTA to initiate a division election among current employees to determine employee interest in participating in a Section 218 Social Security Agreement.

Under the divided vote procedure, each employee who is a member of CalPERS on the election date will make an individual choice as to whether they personally want to be covered under Social Security. All new employees as of July 1, 2019 will be covered on the date they become members of the retirement system.

### **STAFF RECOMMENDATION:**

Adopt Resolution No. 2019-06 Authorizing the General Manager to Conduct a Section 218 Division Election for Social Security Benefits Agreement.

### **ATTACHMENTS:**

1. Resolution No. 2019-06
2. Procedures for Conducting a Division of Retirement System for Social Security Coverage
3. Code of Regulations Title 2 Article 2. Election Procedures for Local Public Agencies

RESOLUTION #2019-06

WHEREAS, Mendocino Transit Authority hereinafter designated as "Public Agency", desires to establish a "deemed" retirement system pursuant to Section 218(d)(6) of the Federal Social Security Act composed of positions of members of the California Public Employees' Retirement System hereinafter designated as "Present Retirement System", desiring coverage, and to include services performed by individuals employed by the Public Agency in positions covered by said "deemed" retirement system, as members of a coverage group established by Section 218(d)(4) of said Act, in the California State Social Security Agreement of March 9, 1951, providing for the coverage of public employees under the insurance system established by said Act as amended; and

WHEREAS, State and Federal law and regulations require, as a condition of such coverage, that a division be authorized by the Board of Administration, Public Employees' Retirement System; and

WHEREAS, it is necessary that the "Public Agency" now designate any services which it desires to exclude from coverage with respect to such coverage group under said insurance system; and

WHEREAS, it is necessary for the Public Agency to set forth the modification, if any, of the benefits and contributions under the Present Retirement System that may result from coverage under the said insurance system with respect to such coverage group;

NOW, THEREFORE, BE IT RESOLVED, that the Board of Administration, Public Employees' Retirement System, be and hereby is requested to authorize the foregoing division; and

BE IT FURTHER RESOLVED, that upon receipt of authorization from the Board of Administration a division shall be conducted in accordance with the requirements of Section 218(d) of the Social Security Act, and applicable State and Federal laws and regulations; that each eligible member of the Present Retirement System at the time of the division shall be furnished a form to permit the member to elect whether or not his services should be excluded from or included under the said California State Social Security Agreement as hereinbefore provided; with such coverage effective as to services performed on and after July 1, 2019; and

BE IT FURTHER RESOLVED, that the following services with respect to said coverage group of the Public Agency shall be excluded from coverage under said agreement:

1. All services excluded from coverage under the agreement by Section 218 of the Social Security Act; and
2. Services excluded by option of the Public Agency (**Check a. or b.; fill in part b if checked**):

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a. No optional exclusions desired.

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b. Service performed: \_\_\_\_\_

BE IT FURTHER RESOLVED, that with respect to the said coverage group the benefits and contributions of the Present Retirement System shall not be modified in any way; and

BE IT FURTHER RESOLVED, that notice of the division shall be given to members of the Present System not less than ninety days prior to the date of the division; provided, however, that notice shall be given to employees becoming members of the Present Retirement System after the date of such notice up to and including the date of the division on the date on which they attain membership in the system; and that Carla Meyer, General Manager is hereby designated and appointed to conduct such division on behalf of the Public Agency in accordance with law, regulations, and this resolution, including the fixing of the date and the giving of proper notice thereof to members of the Present Retirement System and to all such eligible employees; and

BE IT FURTHER RESOLVED, that the Public Agency will pay and reimburse the State at such time and in such amounts as may be determined by the State the approximate cost of any and all work and services relating to such division.

Adopted by the Mendocino Transit Authority Board of Directors at a regular meeting held on April 24, 2019 by the following roll call vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

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Presiding Officer

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Mendocino Transit Authority

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Official Name of Public Agency

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Date

CERTIFICATION

I, Heather Lindsteadt, Clerk of the Board of the Mendocino Transit Authority, State of California, do hereby certify the foregoing to be a full, true, and correct copy of Resolution No. 2019-06 adopted by the Board of Directors of the Mendocino Transit Authority at the regular/special meeting held on the 24<sup>th</sup> day of April, 2019, as the same appears of record in my office.

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF CALIFORNIA  
SOCIAL SECURITY PROGRAM FOR CALIFORNIA PUBLIC AGENCIES

PROCEDURES FOR CONDUCTING A  
DIVISION OF RETIREMENT SYSTEM FOR SOCIAL SECURITY COVERAGE

The procedures described herein are primarily based on Sections 22150, 22151, 22151.1 and 22152 of the California Government Code, Sections 598.60 through 598.68 of the California Code of Regulations, and Section 218(d) of the Social Security Act.

THE TERM "MEMBER" APPLIES TO ALL PERSONS ELIGIBLE TO JOIN THE RETIREMENT SYSTEM, WHETHER OR NOT THEY HAVE ELECTED TO JOIN. (Section 22015 of the Government Code)

1. The governing body of the Public Agency initiates the Division procedures by adopting a resolution provided by State Administrator to:
  - a. Request authorization to divide the Public Agency's retirement system;
  - b. Establish the effective date of Social Security coverage;
  - c. State which exclusions from Social Security coverage are to be requested;
  - d. Name the Local Division Officer who will conduct the Division on behalf of the Public Agency; and
  - e. Specify the plan of combination of Social Security and the present retirement system, (i.e., supplementation, coordination, etc.).
2. The Public Agency submits to the Board of Administration, California Public Employees' Retirement System, State Social Security Administrator Program, P. O. Box 720720, Sacramento, California 94229-0720:
  - a. One copy of the resolution requesting authorization to conduct the Division. The State authorizes the Division and appoints a State Supervisor. The Public Agency is advised of the authorization and appointment;
  - b. A list of all positions established in the Public Agency, whether or not they are subject to the retirement system. The Public Agency will be advised which positions are considered Police and Fire positions; individuals in Police and Fire positions are not eligible to vote in the Division; and
  - c. A completed coverage questionnaire.
3. State Administrator will provide the Public Agency with a draft of the Notice of Division, Statement of Information and Plan of Procedure to be completed and returned for approval.

4. The Public Agency establishes the date on which the Division will be held. The Division must be held no less than 90 days after the date the Notice of Division is distributed to eligible employees. The Local Division Officer prepares and submits to the State Supervisor for approval:
  - a. A proposed Notice of Division to be given to eligible members of the retirement system;
  - b. A proposed Statement of Information to employees to inform them of the rights and benefits which will accrue to them and to their dependents and survivors, and the liabilities to which they will be subject, if their services are covered under Social Security. The Statement must include a general explanation of the modified retirement system that may result from Social Security coverage; and
  - c. A proposed Plan of Procedure to be followed in the conduct of the Division.

NOTE: The State Administrator must receive the completed Plan of Procedure and Notice forms at least 3 weeks prior to the date the Public Agency intends to distribute them to the eligible members. The Public Agency should allow time to prepare its final copies, arrange for distribution, etc.

5. After receiving approval by the State Supervisor of the Notice, Statement, and Plan, the Local Division Officer may distribute the Notice and Statement of Information to members of the retirement system. Notice must be given to members of the retirement system on leaves of absence and to all employees becoming members of the retirement system up to and including the date of Division.

If any doubt arises as to an employee's eligibility to participate in the Division, a Notice and Statement should be given to the employee; his or her status can be resolved later. Under Section 598.64 of the California Code of Regulations, notice must be given by personal delivery or by first class mail and must be posted on all bulletin boards maintained by the Public Agency to give notices to employees.

6. On the date established for the Division, each member of the retirement system eligible to vote is to be supplied with a Division election form, approved by the State Supervisor, for each member to indicate whether he or she wishes to be covered by Social Security. If the form is supplied by mail, it must be sent by first class mail and must be accompanied with a stamped return envelope and instructions as to the date it must be postmarked and the address to which it must be returned.

On the date of the Division, the Local Division Officer establishes a list of eligible members of the retirement system. To be eligible to participate in the Division, an employee must be a member of and in a position covered by the retirement system on the date of the Division. Members who fall within coverage exclusions elected by the Public Agency are not eligible.

7. Section 598.65 of the Administrative Code requires the return of the Division election form within ten days of the division date. Failure to return a properly executed form by such time is considered an election to be included in the group that does not desire Social Security coverage.

8. At the close of the Division period, the Local Division Officer will:
  - a. Certify the Completion of the Division procedures to the State Supervisor.
  - b. Prepare a certified list of persons who were eligible to receive a Division election form and indicate the choice made by each individual as follows:

YES - Members who chose to be covered under Social Security.  
NO - Members who chose not to be covered under Social Security.  
NR - Members not returning the Division election form.
  - c. Send the list and all returned Division election forms to the State Supervisor for certification to the Board of Administration of the California Public Employees' Retirement System, to be maintained as a permanent record by the Board.
  - d. To avoid misunderstanding, notify each member on the list who will not be covered under Social Security.
9. After the ten-day Division period, the governing body of the Public Agency may officially request Social Security coverage by adoption of a resolution and execution of an agreement with the State. The resolution and coverage agreement documents necessary for the Public Agency's governing body to formally request coverage will be provided.
  - a. The following will be sent to the State Administrator:
    - (1) The original and one certified copy of the Resolution (PERS-SOC-33D).
    - (2) The original and one signed copy of the Application-Agreement (PERS-SOC-32D).
  - b. The request will extend Social Security coverage to:
    - (1) All retirement system members who chose Social Security during the Division;  
and
    - (2) All new and reinstated employees who become members of or qualify for membership in the retirement system (except Police and Fire) after the Division date.
10. After the State executes the agreement with the Public Agency, an executed copy will be returned to the Public Agency. The State will then request inclusion of the Public Agency in the master Social Security agreement between the State and the Federal Government. Accompanying the State's request will be a certification to the Federal Government of the proper conduct of the Division.



11. The Public Agency will be officially in the Social Security program as of the date the request for coverage is approved by the Federal Government. The Public Agency will be notified by the State of the date and it will be assigned an employer identification number for Social Security purposes. To be eligible for retroactive coverage, the members must be in an employment relationship on the Federal approval date.
12. If the retirement formula is to be changed from Full to Modified, upon the Federal approval for coverage, the governing body of the Public Agency may then proceed to amend its CalPERS contract. Modified CalPERS member contributions may be effective no earlier than the date the federal government approves the agreement to include the Public Agency in the program.
13. All Social Security taxes will be deposited directly to the Internal Revenue Service. The Internal Revenue Service will provide reporting information.

14. EFFECTIVE DATE OF COVERAGE

Coverage may be requested retroactive to five years prior to the first year in which all coverage procedures, including Federal approval, are completed, or any date thereafter. Both the employer and employee will be required to pay Social Security and Medicare contributions retroactive to the effective date of coverage. Your local Social Security office can give you information on the effect of retroactive coverage on Social Security benefits.

If the modification is to correct erroneous reporting, the effective date of the Agreement would be the date when the error first occurred.

15. OPTIONAL EXCLUSIONS

The following optional exclusions are the only ones permitted. Some of them can be further divided into specific classes. The Public Agency should contact State Social Security Administrator's Office if it desires to exclude a specific class of positions to insure proposed exclusion is acceptable under the Social Security Act. It is suggested that you do not request an optional exclusion that does not apply to your agency. Also, please keep in mind, that under these "Division" procedures, only members of a retirement system and optional non-members are involved.

The Public Agency may request exclusion of the following services:

- a. All classes of elective positions or one or more of the following classes of elective positions: legislative, executive, and judicial.
- b. All classes of part-time positions, or certain specific classes of part-time positions, such as part-time clerical positions. If any part-time positions are excluded, a definition of a part-time position for Social Security purposes must be entered on the Applicant Questionnaire. This is a permanent definition.

- c. All classes the compensation for which is on a fee basis. A fee basis position is one for which compensation is by fees received for specific services in the discharge of public duties, such as sometimes occurs with a justice of the peace, or building inspector. If you wish to request the "fee-basis" exclusion, please contact the State Social Security Administrator's Office.
  - d. Agricultural labor, as the term is defined in the Social Security Act, if such work would be excluded if performed for a private employer.
  - e. Student services if such work would be excluded if performed for a private employer. The student exclusion applies only to certain student nurses and to students who are employees of the school they are attending. It does not apply to students working in a city library or recreation department, for example.
16. Your local Social Security office will answer questions relating to Social Security benefits. Questions relating to the Division procedures should be directed to:

CalPERS - State Social Security Administrator Program  
P.O. Box 720720  
Sacramento, Ca 94229-0720

Telephone: (916) 795-0810

STATE OF CALIFORNIA  
SOCIAL SECURITY PROGRAM FOR CALIFORNIA PUBLIC AGENCIES

Abstract from Title 2, California Code of Regulations

Article 2. Election Procedures for Local Public Agencies

593. ADOPTION OF RESOLUTION. Any public agency, as defined in Section 22009, et seq., of the Government Code, except the State, desiring to hold an election, shall first adopt a resolution or ordinance to do so. Such resolution or ordinance shall specify who are the employees eligible to vote in such election, and shall designate by name and title the individual who will conduct the election. Such resolution or ordinance shall establish the effective date upon and after which services performed for such public agency shall be covered under the agreement under the provisions of Section 218 of the Social Security Act. Such resolution or ordinance shall include a request to the board for authorization to hold such election.

Two copies of such resolution, properly certified, shall be submitted to the board.

594. DATE OF ELECTION. Upon receipt of the board's authorization to hold an election, the public agency shall set a date upon which its eligible employees shall vote in such election. This date may be set by the individual who will conduct the election, on behalf of such public agency.
595. SUBMISSION OF PROPOSED NOTICE AND PROCEDURE. The public agency shall prepare a notice of election, specifying, among other matters, the time and place for voting. Such notice, together with a proposed plan of procedure in the conduct of such election, shall be submitted to the supervisor for approval.
596. NOTICE OF ELECTION. After approval by the supervisor of the notice and plan of election, the public agency shall give such notice to all employees eligible to vote in the election. Notice of election shall be given by either personal service or first-class mail, and in addition thereto, by posting such notice on all bulletin boards maintained by such agency to give notices to employees.
597. ELECTION BALLOTS. Ballots shall be furnished to all employees eligible to vote in such election, and only to such employees. The ballots so furnished shall contain a statement of the question to be voted upon in the election. Such question shall be in the words and figures contained in the notice of election hereinabove mentioned. Provision shall be made for an indication by the voter of a vote in either the affirmative or negative. The ballots shall be counted by or under the supervision of the individual who conducts the election.
598. CERTIFICATION OF ELECTION.
- (a) Upon completion thereof, the individual who conducts the election shall, if such be the facts, certify to the supervisor that:

- (1) An election by secret written ballot was held on the question of whether service in positions covered by the retirement system of the public agency should be excluded from or included under the agreement under the provisions of Section 218 of Title II of the Social Security Act;
  - (2) An opportunity to vote in such election was given (and was limited) to eligible employees;
  - (3) Not less than 90 days' notice of such election was given to all such employees;
  - (4) Such election was conducted by him;
  - (5) A majority of the eligible employees voted in favor of including service in such positions under an agreement under said Section 218;
  - (6) That with respect to such election the conditions specified in Section 218(d) of the Social Security Act have been met, and that the protection afforded employees in positions covered by the retirement system as to which such election has been had, as well as those receiving periodic benefits under such retirement system, will not be impaired as a result of making an agreement, bringing such employees under Social Security in accordance with the declared policy of the Congress set forth in Section 218(d) of the Social Security Act.
- (b) Accompanying such certification, the individual who conducted the election shall forward to the supervisor:
- (1) His affidavit of service and posting of the notice of election;
  - (2) A certified copy of the notice of election; and
  - (3) All ballots cast in the election.
- (c) Certification to Governor. The supervisor shall thereupon certify to the Governor or such other state official designed by the Governor that such election has been conducted and completed in full accordance with law and these regulations.
- (d) Destruction of Election Ballots. The ballots cast in the election shall be forwarded by the supervisor to the office of the board, where such ballots shall be retained for a period of 30 days following acceptance by the Department of Health and Human Services of the modification including in coverage under the federal-state agreement the retirement system coverage group with respect to which the election was held. At the expiration of the said 30-day period, the ballots shall be destroyed.
- 598.1 RATIFICATION. All action taken by any public agency in accordance with law and these regulations, but taken before the formal adoption hereof, is hereby ratified, approved and confirmed.

STATE OF CALIFORNIA  
SOCIAL SECURITY PROGRAM FOR CALIFORNIA PUBLIC AGENCIES

Abstract from Title 2, California Code of Regulations

Article 3. Division of Retirement Systems

- 598.60 AUTHORIZATION FOR DIVISION. The governing body of any public agency, as defined in Section 22009 of the Government Code, except the State, may divide a retirement system established by it into two parts in accordance with these rules, one part composed of positions of members of such system who desire coverage under the Federal System, and the other composed of positions of members who do not desire such coverage.
- 598.62 RESOLUTION REQUESTING DIVISION. Authorization shall be requested by a resolution adopted by the governing body or such other officer or body as may be authorized or directed by law to divide the system. The resolution shall include: (1) a designation of the members, if any, who are excluded from participation in the division; (2) a designation by name and title of the local division officer who will conduct the division; and (3) the effective date on and after which services of members will be included in the federal system. The resolution shall provide for reimbursement of estimated costs incurred by the State in connection with the division and shall fix the date for the division or authorize the local division officer to fix such date. Two copies of the resolution properly certified shall be filed with the board.
- 598.63 EXECUTIVE OFFICER'S AUTHORIZATION. The Executive Officer, upon the filing of a resolution complying with these regulations, shall authorize a division of the retirement system and shall designate the State division supervisor to supervise the conduct of the division.
- 598.64 NOTICE OF DIVISION. The local division officer shall, upon issuance of the authorization, prepare a notice of the division which shall contain among other matters the date of the division and an explanation of the modification if any to be made in the retirement system as it applies to public agency employees. He shall submit such notice together with the proposed plan of procedure to the state division supervisor for approval. The approved notice shall be given not less than 90 days prior to the date set for the division to all persons who are eligible members of the system. Such notice shall also be given to each person who becomes an eligible member after the notice date to and including the date fixed for the division. Notice shall be given by personal delivery or by first-class mail and must be posted on all bulletin boards maintained by the agency to employees.

- 598.65 DIVISION ELECTION FORM. Each member of the retirement system on the division date shall be supplied with a division election form devised or approved by the Executive Officer, Public Employees' Retirement System, containing provisions for an election by the member whether he desires to be or not to be included in the part of the system to be covered under the Federal System. If supplied by mail, the form shall be sent by first-class mail. Failure to execute and return a form indicating an election to be included in that part of the system to be covered under the federal system on the division date or within 10 days or such longer period thereafter as may be prescribed by the Executive Officer, shall be deemed an election not to be included in such part, unless the board finds that failure was due to circumstances beyond the control of the member.
- 598.66 CERTIFICATE OF CONDUCT OF DIVISION. Upon completion of division procedures in compliance with these rules, the local division officer shall so certify to the state division supervisor. He shall forward to the supervisor a certified list of the members eligible to participate in the division and all election forms properly executed and returned by eligible members in the division.
- 598.67 DIVISION SUPERVISOR'S CERTIFICATE. The supervisor of the division, upon receipt thereof and upon finding that the division was conducted in compliance with applicable law and these rules, shall approve the list and election forms and file the same in the office of the board where they shall be maintained as a permanent record. He shall thereupon certify to the Governor or to any such other State official designated by the Governor to make the certification required in Section 218(d)(6) of the Federal Social Security Act with respect to the division that:
- (a) An opportunity to vote by written ballot on the question whether they wish to be covered under the federal system was given to all individuals who were members of the system at the time the vote was held;
  - (b) Not less than 90 days' notice was given to all individuals who were members of such system on the date the notice was issued;
  - (c) The vote was conducted under the supervision of the division supervisor; and
  - (d) All written election forms returned and approved by the supervisor, together with a list of the members eligible to participate in the division, have been filed in the office of the board.
- 598.68. APPLICATION AND AGREEMENT. When the division supervisor's certificates have been filed, the governing body of the public agency may submit an application and agreement to the board for coverage under the federal system of the members of the system established by these procedures composed of the members electing such coverage.