

IMPERIAL COUNTY EMPLOYEES' RETIREMENT SYSTEM
BYLAWS AND REGULATIONS

CHAPTER 1

GENERAL

Section 1 Citation.

The Imperial County Employees Retirement System Bylaws and Regulations govern the operation of the Imperial County Employees Retirement System and the procedures in matters brought before the Imperial County Board of Retirement under the provisions of the County Employees Retirement Law 1937 (commencing at Gov. Code Sec. 31450), operative with respect to the officers and employees of the County of Imperial July 1, 1951, and under the provisions of these bylaws and regulations. These bylaws and regulations shall be cited as the "Retirement System Bylaws and Regulations" and are referred to herein as the "bylaws and regulations." The Imperial County Codified Ordinances are hereinafter referred to as "County Code". (County Code, Secs. 3.36.010, 3.36.020; Gov. Code, Sec. 31525)

Section 2 Purpose.

The purpose of these bylaws is to provide for regulations, guidelines, rules and procedures pursuant to Government Code Sections 31525 and 31526.

Section 3 Definitions.

Unless the context or subject matter requires otherwise in these bylaws and regulations, the following definitions shall apply in these bylaws and regulations:

(a) 1937 Act means those provisions, including amendments, recodifications, and judicial interpretations, of the County Employees Retirement Law of 1937 as provided by Title 3, Division 4, Part 3, Chapter 3 (commencing at Sec. 31450) of the Government Code which apply to Imperial County, the Imperial County Board of Supervisors, the Imperial County Employees' Retirement System, the Imperial County Board of Retirement and members of the Imperial County Employees' Retirement System.

(b) Applicable provisions of the 1937 Act and the Brown Act means those provisions, including amendments, recodifications and judicial interpretations, of the 1937 Act and the Brown Act which apply to Imperial County, the Imperial County Board of Supervisors, the Imperial County Retirement System, the Imperial County Board of Retirement and members of the Imperial County Retirement System.

(c) Board member means a member of the Board of Retirement. (Gov. Code Sec. 31520.1)

(d) Board of Retirement means the Imperial County Board of Retirement, the body delegated with management of the Imperial County Employees' Retirement System, hereinafter referred to as "Board". (Gov. Code Sec. 31520)

(e) Board of Supervisors means the Imperial County Board of Supervisors.

(f) Brown Act means the Ralph M. Brown Act Open Meeting Law as provided by Title 5, Division 2, Part 1, Chapter 9 (commencing at Sec. 54950) of the Government Code.

(g) Bylaws and regulations means the Imperial County Employees' Retirement System Bylaws and Regulations.

(h) County means Imperial County.

(i) County Counsel means the County of Imperial County Counsel.

(j) County Health Officer means the Imperial County Health Officer.

(k) Court System means the Imperial County Court System.

(l) Employee means:

(1) any officer or other person employed by Imperial County or the Imperial County Court System whose compensation is fixed by the Imperial County Board of Supervisors or by statute.

(2) any other officer or other person employed by any district within Imperial County which is included in the Imperial County Employees Retirement System. (Gov. Code Sec. 31469) NOTE: An independent contractor is not an employee.

(3) Extra help employee means a person employed for a temporary period to perform a specific task, job or assignment. (County Code, Sec. 3.04.020(H))

(4) Intermittent employee means and includes a non-permanent employee without fixed work schedules, who is qualified and available for work and works for the County when called to work on an as-needed basis. (County Code, Sec. 3.04.020(J))

(5) Limited term employee means and includes any employee who is employed in a special project, program, service or position wherein the duration of employment is limited to a specific termination date or conditioned upon the continuation of special funding for the project, program, service or position. (County Code, Sec. 3.04.020 (K))

(6) Part-time employee means any employee who is assigned to work less than a normal full-time schedule for the department in which the employee is employed. (County Code, Sec. 3.04.020(N))

(7) Seasonal employee means any employee appointed to a position, which is designated as seasonal by resolution of the Board of Supervisors or district within Imperial County. (County Code, Sec. 3.04.020(R))

(8) Substitute employee means any employee appointed to a position which is occupied by a regular employee who is off work due to service-connected injury or illness for more than 30 calendar days or on sick leave for more than 30 calendar days. (County Code, Sec. 3.04.020(T))

(9) Temporary employee means any employee appointed to a position as temporary by resolution of the Board of Supervisors or district within Imperial County. (County Code, Sec. 3.04.020(W))

(m) Employer means the County of Imperial or the Imperial County Court System.

(n) Member means a member of the Imperial County Employees' Retirement System as provided by the 1937 Act and these bylaws and regulations. (Gov. Code Secs. 31525, 31526; see generally Gov. Code Secs. 31469.3, 31469.4, 31470, 31470.1, 31470.2, 31470.3, 31470.4, 31470.5, 31470.7, 31470.8, 31470.9)

(o) Referee or Hearing Officer means an attorney appointed by the Board of Retirement to handle a disability retirement matter. Any reference in these Bylaws to "referee" shall also include "hearing officer."

(p) Retirement Administrator means the Administrator of the Retirement System or the designated representative of the Retirement Administrator.

(q) Retirement System means the Imperial County Employees' Retirement System ("ICERS"), a retirement system created and established pursuant to the 1937 Act. The Retirement System was formerly known as the Imperial County Employees' Retirement Association, which is also the name of a private association of County retirees. To avoid confusion the Retirement System changed its name to the Imperial County Employees' Retirement System.

(r) Subpoena or subpena means a writ or order issued by the Board of Retirement directed to a person and requiring the person's attendance at a particular time and place to testify as a witness. (Gov. Code Secs. 31525, 31535; Code of Civ. Proc., Sec. 1985)

(s) Subpoena duces tecum or subpena duces tecum means a subpoena that also requires the person to whom the subpoena is directed to bring with them any books, documents or other things under the person's control which the person is bound by law to produce in evidence. (Gov. Code Secs. 31525, 31535; Code of Civ. Proc., Sec. 1985)

(t) Treasurer means the Imperial County Treasurer/Tax Collector/Retirement Administrator.

Section 4 Resolution of Conflicting Provisions.

The provisions of these bylaws and regulations are intended to conform to the applicable provisions of law, including the 1937 Act, the Ralph M. Brown Act, and the County Code, and such applicable provisions shall prevail in resolving any conflict between the provisions of the 1937 Act or Brown Act or County Code and the provisions of these bylaws and regulations.

Section 5 Retirement System Location and Mailing Address. Revised November 24, 2010

The location and mailing address and telephone number of the administrative office of the Retirement System is:

Imperial County Employees' Retirement System
1221 W. State Street
El Centro, CA 92243
Telephone: (760) 336-3132

Section 6 Captions and Citations.

Captions in these bylaws and regulations are inserted for convenience of reference only and do not define, describe or limit the scope or the intent of these bylaws and regulations or any of the provisions hereof; statutory, case and other citations are inserted for convenience of reference only. (Gov. Code Sec. 31525)

Section 7 Words Used in Present Tense.

Words used in the present tense include the future tense except where otherwise required by the context thereof. (Gov. Code Sec. 31525)

Section 8 Number and Gender.

As used in these bylaws and regulations and whenever required by the context thereof, each number, both singular and plural, shall include all numbers, and each gender shall include all genders. (Gov. Code Sec. 31525)

Section 9 May and Shall.

Whenever used in these bylaws and regulations, "may" is permissive and "shall" is mandatory. (Gov. Code Sec. 31525)

Section 10 California Tort Claims Act.

Notwithstanding any provision of these bylaws and regulations, the provisions and related provisions of the California Tort Claims Act, Division 3.6 of Title 1 of the Government Code, are not waived by County and its employees and agents, the Board of Supervisors and its individual members and the Board of Retirement and its individual members and shall apply to any claim against any and all of these parties arising out of any act or conduct relating to the 1937 Act, these bylaws and regulations or County service unless provided otherwise by resolution of the body against whom a claim may be filed. (Gov. Code Sec. 31525)

Section 11 Severability.

If any provision of these bylaws and regulations or application thereof to any person, entity or circumstance shall be declared invalid by a court of competent jurisdiction, or is in contravention to any provision of the constitution, statutes, rules, regulations or case law of the United States or the State of California or ordinances, rules and regulations of Imperial County, the remaining provisions of these bylaws and regulations shall not be invalidated and shall remain in full force and effect, and to that extent the provisions of these bylaws and regulations are declared severable. (Gov. Code Sec. 31525)

CHAPTER 2

IMPERIAL COUNTY BOARD OF RETIREMENT

Section 12 Management.

The Retirement Board has the authority to appoint, hire or contract with an "Administrator" to manage the day-to-day operations of the system. The Board has in the past used the services of the County Treasurer to function as the designated Administrator. However, the Board may at any time designate, hire or contract with any person, firm or corporation to provide this service.

Unless otherwise designated by the Board, the Administrator shall be the County Treasurer supported by County staff. Routine day-to-day administration of the Retirement System is delegated to the Retirement Administrator; and the provisions of the 1937 Act and these bylaws and regulations shall represent the standards by which the Retirement Administrator shall exercise the delegation of authority. (Gov. Code Secs. 31520, 31525)

Section 13 Composition, Election, Appointment Term; Vote of Alternate Member.

(a) Composition. The Board of Retirement shall consist of nine board members, one of whom shall be the Treasurer, and two alternates. (Gov. Code Sec. 31520.1)

(b) Election and Appointment.

(1) The second and third board members shall be members of the Retirement System, other than safety members, elected by such members within 30 days after the Retirement System becomes operative in a manner determined by the Board of Supervisors.

(2) The fourth, fifth, sixth, and ninth board members shall be qualified electors of County who are not connected with County government in any capacity, except one may be a supervisor, and shall be appointed by the Board of Supervisors. A supervisor appointed as a member of the Retirement Board shall not serve beyond that supervisor's term of office as supervisor.

(3) The seventh board member shall be a safety member of the Retirement System elected by the safety members.

(4) The eighth board member shall be a retired member elected by the retired members of the Retirement System in a manner to be determined by the Board of Supervisors.

(5) The alternate seventh board member shall be that candidate, if any, for the seventh board member from the group under Government Code Section 31470.2 or 31470.4, which is not represented by a board member who received the highest number votes of all candidates in that group. If there is no such candidate, there shall be no alternate member. (Gov. Code Sec. 31520.1)

(6) The alternate eighth board member shall be appointed from a list of nominees submitted by a qualified retiree organization who shall serve until the expiration of the current term of the eighth member. Thereafter, the member shall be elected separately by the retired members of the association in the same manner and at the same time as the eighth member is elected. (Gov. Code Sec. 31520.5)

(c) Votes of Alternate Members.

(1) The seventh alternate board member shall vote as a member of the Board of Retirement only in the event the second, third, seventh, or eighth board member is absent from a Board of Retirement meeting for any reason, or if there is a vacancy with respect to the second, third, seventh, or eighth board member, the alternate board member shall fill such vacancy until a successor qualifies.

(2) The seventh alternate board member shall sit on the Board of Retirement in place of the seventh member when a member of the same service is before the Board of Retirement for determination of the member's retirement. (Gov. Code Sec. 31520.1)

(3) The alternate retired member shall vote as a member of the board only in the event the eighth member is absent from a board meeting for any reason. (Gov. Code Sec. 31520.5)

(d) Term.

(1) The first person chosen as the second and fourth board members shall serve for a term of two years beginning with the date the system becomes operative, which was July 1, 1951.

(2) The third and fifth board members shall serve for a term of three years beginning July 1, 1951.

(3) The sixth, seventh and alternate board members shall serve for a term of two years beginning January 1, 1952.

(4) The eighth and ninth board members shall take office as soon as practicable for an initial term to expire concurrent with the expiration of the longest remaining term of an elected member.

(5) Thereafter the terms of office of the elected and appointed board members and alternate seventh board member are three years. (Gov. Code Sec. 31520.1)

(6) The term of the alternate retired member shall run concurrently with the term of office of the eighth member. (Gov. Code Sec. 31520.5)

Section 14 Conduct of Elections

A. BOARD MEMBERS:

The second and third members of the Board of Retirement are general members of the Imperial County Employees' Retirement System and shall be elected only by general members. The seventh member is a safety member and shall be elected only by safety members. The eighth member is a retired member and shall be elected only by retirees of the Imperial County Employees' Retirement System. The tenth and eleventh members of the Board of Retirement are alternate members.

The seventh and tenth members of the Board of Retirement, designated as safety and alternate members, shall be safety members and shall be elected only by such safety members. The alternate member shall be that candidate, if any, for the safety member from the group under Section 31470.2 or 31470.4 of the Government Code which is not represented by a safety board member who received the highest number of votes of all candidates in that group. If there is no such candidate, there shall be no alternate member. The eleventh member is the alternate retired member and shall be elected only by retirees of the Imperial County Employees' Retirement System.

B. REGULAR ELECTION:

(1) The Board of Retirement shall request that the Board of Supervisors call for an election. The Retirement Administrator shall notify the Registrar of Voters that an election has been called. If any date falls on a holiday, weekend or other day that business is not being conducted, the following day shall be the applicable date.

(2) The Registrar of Voters shall, not less than three (3) days before the first Friday in October for terms that begin on January 1, or the first Friday in April for terms that begin on July 1, send to each county department, the courts, and post in conspicuous places and on the Internet, notices that state that nomination petitions are available from the Registrar of Voters, the number of signatures required, and date of election.

(3) Nomination shall be by petition signed by not less than twenty (20) for general members and five (5) for safety members, the retired member, and the alternate retired member.

(4) Petitions for nomination shall be in substantially the following form:

“We, the undersigned [general][safety][retired] members of the Imperial County Employees’ Retirement System, do hereby nominate _____ as a candidate for the office of _____ member of the Board of Retirement, to be elected for a term of three years by members of said Retirement System.”

(5) Nomination petitions shall be presented to the Registrar of Voters no earlier than 9:00 a.m. on the first Friday in October and no later than 5:00 p.m. on the third Friday in October for terms beginning January 1 and no earlier than 9:00 a.m. on the first Friday in April and no later than 5:00 p.m. on the for terms beginning July 1. If an election has been called and only one member nominated, the Board of Supervisors shall order that no election be held and shall appoint the nominee in lieu of an election. The candidate will take office and serve as if elected.

(6) Each candidate may prepare a statement of qualifications. The statements may include the name, age and occupation of the candidate and a brief description of no more than 200 words of the candidate’s education and qualifications. Any cost to file and distribute a candidate’s statement will be borne by the candidate and paid to the elections office. The statement must be presented to the Registrar of Voters no later than the third Friday in October for terms beginning January 1 and the third Friday in April for terms beginning July 1.

(7) The Imperial County Employees’ Retirement System (“Retirement System”) staff shall determine whether the person named in the nomination petition is a general, safety or retired member and whether the persons signing the nomination petition are general, safety or retired members.

(8) The Retirement System staff shall prepare a list and labels of all persons entitled to vote and shall furnish the list to the Registrar of Voters on the first Monday following the last day that nominating petitions can be presented to the Registrar of Voters. The Registrar of Voters shall prepare a ballot and provide the ballot proof to the Retirement Administrator for approval. The Registrar of Voters will order and distribute the ballots.

(9) any candidate statement shall be distributed with the ballots. Ballots shall be printed y the Registrar of Voters and shall contain the names of those nominated for each position. There are no provisions for write-in candidates and no write- votes will be counted. Ballots will be distributed with the payroll for safety and general members and mailed to retirees.

(10) The election will be held on the fourth Tuesday in November for terms beginning January 1 and the fourth Tuesday in May for terms beginning July 1. All voted ballots must be received by the Registrar of Voters no later than 5:00 p.m. on Election Day.

(11) The Registrar of Voter shall canvass the votes after the election. The canvass shall be public and made by tallying the vote for each name appearing on the ballot and declaring the results of such tally. The Registrar of Voters shall certify the results of the election to the Board of Supervisors at the next regular meeting of the Board of Supervisors following the canvass, and shall declare the person receiving the greatest number of votes to be an elected member of the Board of Retirement for a term of three (3) years.

C. VACANCIES:

If a vacancy in the office of a board member occurs for any reason, a successor shall be chosen at a special election conducted in the manner as set forth below. If a date fall on a holiday, weekend or any date where business is not conducted, then the following day shall be the applicable date. If such election has been called and only one member nominated, the Board of Supervisors shall order that no election be held and shall appoint the nominee in lieu of an election.

D. SPECIAL ELECTION:

Special elections as required to fill vacancies on the Board of Retirement shall be called by the Board of Supervisors and shall be conducted in accordance with these regulations. The person elected shall complete the remaining term of the vacated seat.

(1) The Board of Retirement shall request that the Board of Supervisors call for an election. Once the Board of Supervisors calls for an election, the Retirement Administrator shall notify the Registrar of Voters that an election has been called. If a date falls on a holiday, weekend or any date where business is not conducted, then the following day shall be the applicable date.

(2) The Registrar of Voters shall, not less than fifty-six (56) days before the election, send to each county department, the courts, post in conspicuous places, and on the Internet, notices that state that nomination petitions are available from the Registrar of Voters, the number of signatures required, and date of election.

(3) Nomination shall be by petition signed by not less than twenty (20) for general members and five (5) for safety members, the retired member, and the alternate retired member. Nomination petitions shall be presented to the Registrar of Voters no earlier than fifty-three (53) days before election, and no later than thirty-nine (39) days before Election Day. If such election has been called and only one member nominated, the Board of Supervisors shall order that no election be held and shall appoint the nominee in lieu of an election. The candidate will take office and service as if elected.

(4) Each candidate may prepare a statement of qualifications. The statement may include the name, age and occupation of the candidate and a brief description of no more than 200 words of the candidate's education and qualifications. Any cost to file and distribute a candidate's statement will be borne by the candidate and paid to the elections office. The statement must be presented to the Registrar of Voters no later than thirty-nine (39) days before Election Day.

(5) The Imperial County Employees' Retirement System ("Retirement System") staff shall determine whether the person named in the nomination petition is a general, safety or retired member and whether the persons signing the nomination petition are general, safety or retired members.

(6) The Retirement System staff shall prepare a list and labels of all of persons entitled to vote and shall furnish the list to the Registrar of Voters on or before thirty-six (36) days before each election. The Registrar of Voters shall prepare a ballot and provide the ballot proof to the Retirement Administration for approval. The Registrar of Voters will order and distribute the ballots.

(7) Any candidate statement shall be distributed with the ballots. Ballots shall be printed by the Registrar of Voters and shall contain the names of those nominated for each position. There are no provisions for write-in candidates and no write-in votes will be counted. Ballots will be distributed with the payroll for safety and general members and mailed to retirees.

(8) The election will be held on the fourth Tuesday of the following month. Each voter shall return the voted ballot to the Registrar of Voters no later than 5:00 p.m. on Election Day.

(9) The Registrar of Voters shall canvass the votes after election. The canvass shall be made in public and by tallying the vote for each name appearing on the ballot and declaring the results of such tally. The Registrar of Voters shall certify the results of the election to the Board of Supervisors at the next regular meeting of the Board of Supervisors following the canvass, and shall declare the person receiving the greatest number of votes to be an elected member of the Board of Retirement.

E. TIE:

If any election results in a tie, the candidates shall draw straws before a regular meeting of the Board of Supervisors to ascertain the winner. The short straw wins. The straws will be held by the Retirement Administrator or Chairman of the Board of Retirement.

F. COST OF ELECTION:

All costs of an election shall be borne by the Imperial County Employees' Retirement System.

G. RECOUNTS:

In the event a candidate makes a request for a recount of the election results, the requestor shall bear the cost of such a recount. A written request for a recount must be filed with the Registrar of Voters within ten (10) days after the election. The candidate filing the request for a recount shall deposit a sum with the Registrar of Voters as a deposit against the cost of the recount. The Registrar of Voters shall determine the deposit sum. In the event the recount results in a determination that the candidate who requested a recount has received a plurality of votes cast, all money deposited shall be returned to the candidate.

Section 15 Materials Furnished to Board Members.

(a) Definition of Materials. "Materials" mean in this section current copies of the 1937 Act, these bylaws and regulations, the Retirement Board's Policies and Procedures, a Statement of Economic Interest form, and "Can I Vote?" a pamphlet by the California Fair Political Practices Commission providing an overview of conflict of interest rules.

(b) Furnishing of Materials.

(1) Materials for New Member of Board of Retirement. As soon as is administratively feasible after the election or appointment of the new board member, the materials shall be furnished to such new member who has not served on the Board of Retirement within one year prior to the date of election or appointment.

(2) Materials for Other Members of Board of Retirement. Any member of the Board of Retirement indicating that such member does not possess the materials shall be furnished the materials upon request or as soon as the materials are available.

(3) Revised, Amended and Supplemented Materials. Revisions, amendments and supplements to the materials shall be:

(A) furnished to each member of the Board of Retirement, and

(B) entered into the minutes of the Board of Retirement upon receipt.

Section 16 Board Vacancy.

If a vacancy on the Board of Retirement occurs for any cause or on the expiration of the term of office of any board member, a successor shall be chosen in the same manner as was the predecessor, except that if an election to fill a vacancy for the second, third, seventh or eighth board member has been called and only one member has been duly nominated in accordance with the rules established for the holding of such election, the Board of Supervisors shall order that no election be held and shall direct the Imperial County Clerk to cast a unanimous ballot in favor of such nominated member. (Gov. Code Sec. 31523)

Section 17 Board Member Separation.

Separation from the service of the county of a member of the Board of Retirement vacates the board member's office. (Gov. Code Sec. 31524)

Section 18 Election of Officers.

(a) Election. At the regular December meeting of the Board of Retirement, the Board of Retirement shall elect one of its members Chairman, a second member Vice-Chairman and a third member Secretary who each shall take office on January 1 of the following year. The Vice-Chairman shall act (1) as temporary Chairman in the absence of the Chairman, or (2) as Secretary in the absence of the Secretary. The Secretary shall serve as temporary Chairman as well as Secretary in the event of the absence of the Chairman and Vice-Chairman. Absence as used therein shall mean (1) absence from any meeting of the Board of Retirement or (2) unavailable to represent the Board of Retirement.

(b) Vacancy. If a vacancy occurs in the office of Chairman, Vice-Chairman or Secretary for any reason, the Board of Retirement shall select a successor for the balance of the unexpired term at its next regular meeting. (Gov. Code Sec. 31526)

Section 19 Staff Personnel.

The Board of Retirement may appoint such administrative, technical, and clerical staff personnel as are required to accomplish the necessary work of the Retirement System and the Board of Retirement. The appointments shall be made from eligible lists created in accordance with the civil service or merit system rules of Imperial County. The personnel shall be County employees and shall be subject to County civil service or merit system rules and shall be included in the salary ordinance or resolution adopted by the Board of Supervisors for the compensation of County officers and employees. (Gov. Code Sec. 31522.1)

Section 20 Retirement Administrator Position.

In a county in which the Board of Retirement or both the Board of Retirement and the board of investment have appointed personnel pursuant to Section 31522.1, the respective board or boards may elect to appoint an administrator as provided for in this section. The position of the administrator shall not be subject to County civil service or merit system rules. The person so appointed shall be a County employee and the position of administrator shall be included in the salary ordinance or salary resolution adopted by the Board of Supervisors for the compensation of County officers and employees. The administrator so appointed shall be directed by, shall serve at the pleasure of, and may be dismissed at the will of, the appointing board or boards. Specific charges, a statement of reasons, or good cause shall not be required as a basis for dismissal of the administrator by the appointing board or boards. (Gov. Code Sec. 31522.2; March 15, 2006).

Section 21 Prohibited Personal Interest.

A board member or employee of the Board of Retirement shall not become an endorser, surety, or obligator on, or have any personal interest, direct or indirect, in the making of any investment for the Board of Retirement, or in the gains or profits accruing therefrom, unless permitted by the 1937 Act. The board member or employee shall not directly or indirectly, for himself or herself or as agent or partner of others, borrow or use any of the funds or deposits of the retirement system, except to make such current and necessary payments as are authorized by the Board of Retirement. (Gov. Code Sec. 31528).

Section 22 County Counsel.

County Counsel shall be the attorney for the Board of Retirement. (Gov. Code Sec. 31529)

Section 23 County Health Officer.

The County Health Officer shall advise the Board of Retirement on medical matters and, if requested by the Board of Retirement, shall attend its meetings. (Gov. Code Sec. 31530)

Section 24 Referee.

Whenever, in order to make a determination, it is necessary to hold a hearing the Board of Retirement may appoint either one of its members or a member of the state Bar of California to serve as a referee. The referee shall hold such a hearing and shall transmit, in writing, to the Board of Retirement the referee's proposed findings of fact and recommended decision. (Gov. Code Sec. 31533)

Section 25 Service of Referee Proposed Findings.

The proposed findings of fact and recommendations of the referee shall be served on the parties who have 10 days to submit written objections thereto which shall be incorporated in the record to be considered by the Board of Retirement. Upon receiving the proposed findings of fact and recommendations of the referee, the Board of Retirement may:

- (a) approve and adopt the proposed findings and the recommendations of the referee, or
- (b) require a transcript or summary of all the testimony, plus all other evidence received by the referee. Upon the receipt thereof the Board shall take such action as is indicated by such evidence, or
- (c) refer the matter back with or without instructions to the referee for further proceedings, or
- (d) set the matter for hearing before itself. At such hearing the Board of Retirement shall hear and decide the matter as if it had not been referred to the referee. (Gov. Code Sec. 31534)

Section 26 Subpoenas.

(a) Issuance of Subpoenas. The Board of Retirement shall issue subpoenas and subpoenas duces tecum signed but otherwise in blank ("the subpoena power"). The Retirement Administrator shall make such subpoenas and subpoenas duces tecum available upon request by any party to a proceeding pending before the Board of Retirement, including a proceeding on an application for disability retirement ("the party"). The party shall fill in the subpoena or subpoena duces tecum before service.

(b) Enforcement of Subpoena Power. Subpoena power shall be exercised and enforced in the same manner as the similar power granted the Board of Supervisors in Title 3, Division 2, Part 2, Chapter 1, Article 9 (commencing with Sec. 25170 of the Government Code); except that such power shall extend only to matters within the jurisdiction of the Board of Retirement, and committees of the Board of Retirement shall not have subpoena power.

(c) Signing of Subpoena. The Chairman or Secretary of the Board of Retirement, the Retirement Administrator or their designee (including any referee or hearing officer the Board of Retirement appoints) shall sign subpoenas. (Gov. Code Sec. 31535)

(d) Oaths. Any member of the Board of Retirement, the referee, or any person otherwise empowered to issue subpoenas may administer oaths to, or take depositions from, witnesses before the Board of Retirement or referee. (Gov. Code Secs. 31525, 31535).

(e) Witness. A witness served with a subpoena shall attend at the time appointed, with any papers under the control of the witness lawfully required by the subpoena, and answer all relevant and legal questions; and, unless sooner discharged, shall remain until testimony is closed. (Gov. Code Secs. 31525, 31535; Code of Civ. Proc., Sec. 2064)

(f) Failure to Comply with Subpoena. Failure of any witness, including a physician or other expert witness, to comply with the provisions of subdivision (e) shall be grounds for not admitting into evidence any statement, document, including complete report or report, or other evidence attributable to the witness, or for construing any statement, document or other evidence in a way unfavorable to such witness. (Gov. Code Sec. 31535)

(g) Depositions. Subpoenas and subpoenas duces tecum may be used for taking depositions from parties and witnesses at such times and locations designated by a party which shall constitute taking such deposition before the Board of Retirement. (Gov. Code Secs. 31525, 31535)

Section 27 Agent for Service of Process.

The Clerk of the Board of Retirement shall act as agent for service of process on the Board of Retirement. (Code of Civ. Proc., Sec. 416.50)

CHAPTER 3

MEETINGS OF BOARD OF RETIREMENT

Section 28 Definition of Action Taken.

Unless the context requires otherwise, whenever used in this chapter, "action taken" means a collective decision made by a majority of the members of the Board of Retirement, a collective commitment or promise by a majority of the members of the Board of Retirement to make a positive or a negative decision, or an actual vote by a majority of the members of the Board of Retirement when sitting as the Board of Retirement, upon a motion, proposal, resolution or order. (Gov. Code Sec. 54952.6)

Section 29 Open and Public Meetings.

(a) Meetings to be Open to Public Attendance. Except as otherwise provided by this chapter and by law, all meetings of the Board of Retirement and meetings of committees of the Board of Retirement delegated authority to take action on behalf of the Board of Retirement shall be open to the public and all persons shall be permitted to attend such meetings. (Gov. Code Sec. 54953)

(b) Conditions to Attendance. A member of the public shall not be required, as a condition of attendance at a meeting of the Board of Retirement, to register the name of the member of the public, to provide other information, to complete a questionnaire, or otherwise to fulfill any condition precedent to the attendance by the member of the public. (Gov. Code Sec. 54953.3).

(c) Recordings. Any person attending a public meeting of the Board of Retirement shall have the right to record the proceedings with an audio or video recorder or camera in the absence of a reasonable finding of the Board of Retirement that such recording constitutes, or would constitute, a disruption of the proceedings. (Gov. Code Sec. 54953.5).

Section 30 Types of Meetings.

(a) Regular Meetings. Regular meetings of the Board of Retirement shall be held at 8:30 a.m. on the third Wednesday of each month in the chambers of the Imperial County Board of Supervisors, Second Floor, 940 West Main Street, El Centro, California (hereinafter referred to as "the Board of Supervisors' Chambers"). If the regular meeting date falls on a holiday, such regular meeting shall be held on the next business day, or an alternate date as determined by the Board of Retirement. (Gov. Code Secs. 31525, 31526(a), 54954)

(b) Disability Retirement Hearings. Disability retirement hearings, special presentations and miscellaneous items of business (hereinafter referred to as "disability hearings") shall be set by the Retirement Administrator as necessary and held at 8:30 a.m. on the first Wednesday of a month, or at such other time as a quorum of the Board of Retirement can meet, in the Board of Supervisors' Chambers. (Gov. Code Secs. 31525, 31526(a))

(c) Special Meetings.

(1) Calling of Meetings Notice. A special meeting may be called at any time by the Chairman, or other presiding officer, of the Board of Retirement or by a majority of the members of the Board of Retirement by delivering personally or by mail written notice to each member of the Board of Retirement and to each local newspaper of general circulation, radio or television station requesting notice in writing. (Gov. Code Sec. 54956)

(2) Notice Procedure and Content; Business Transacted. The agenda shall be delivered personally or by mail and shall be available at least one week before the time of the meeting as specified in the notice. Any action item listed on the agenda that includes backup material must accompany the agenda or the item will be pulled. The agenda shall specify the time and place of the special meeting and the business to be transacted. The Board of Retirement shall consider no other business at these meetings.

(3) Dispensing with Notice. The written notice may be dispensed with as to any board member who, at or prior to the time the meeting convenes, files with the Secretary of the Board of Retirement a written waiver of notice. The waiver may be given by telegram, facsimile or telephone. The written notice may also be dispensed with as to any member who is actually present at the meeting at the time it convenes.

(4) Notice Required. Notice shall be required pursuant to this subdivision (c) regardless of whether any action is taken at the special meeting.

(5) Posting of Notice. The agenda shall be posted at least one week prior to the special meeting in a location that is freely accessible to the public. The agenda shall also be posted on ICERS' website at least five days prior to the meeting.

(d) Emergency Meetings.

(1) No Twenty-Four Hour Notice Necessary. In case of an emergency situation involving matters upon which prompt action is necessary due to the disruption or threatened disruption of public facilities, the Board of Retirement may hold an emergency meeting without complying with either the 24-hour notice requirement or the 24-hour posting requirement of subdivision (c) of this section or both of the notice and posting requirements.

(2) Emergency Situation. For purposes of this section "emergency situation" means any of the following:

(A) Work stoppage, or other activity which severely impairs public health, safety, or both, as determined by a majority of the members of the Board of Retirement.

(B) Crippling disaster, mass destruction, terrorist act or threatened terrorist act that severely impairs public health, safety, or both, as determined by a majority of the members of the Board of Retirement.

(3) Notice to News Media. Each local newspaper-of general circulation and radio or television station which has requested notice of special meetings shall be notified by the Chairman of the Board of Retirement or designee thereof, one hour prior to the emergency meeting by telephone. All telephone numbers provided in the most recent request of such newspaper or station for notification of special meetings shall be exhausted.

(4) Waiver of Notice Requirement. In the event the telephone services are not functioning, the notice requirements of this section shall be deemed waived, and the Board of Retirement or its designee, shall notify those newspapers, radio stations, or television stations of the holding of the emergency meeting, the purpose of the meeting, and any action taken at the meeting as soon after the meeting as possible. (Gov. Code Sec. 54956.5).

(5) Additional Emergency Special Meeting Requirements.

(A) Adherence to Special Meeting Requirements Exception. All special meeting requirements shall be applicable to an emergency meeting, with the exception of the 24-hour notice requirement.

(B) Posting Requirements. The minutes of a meeting called pursuant to this subdivision, a list of persons who the presiding officer of the Board of Retirement, or designee of the Board of Retirement, notified or attempted to notify, a copy of the roll call vote, and any actions taken at the meeting shall be posted for a minimum of 10 days in a public place as soon after the meeting as possible, as well as on ICERS' website. (Gov. Code Sec. 54956.5).

Section 31 Agenda and Order of Business Requirements for Regular Meetings and Disability Retirement Hearings.

(a) Agenda and Order of Business. The agenda and order of business of regular meetings shall be at the discretion of the Retirement Administrator in the absence of instructions from the Board of Retirement.

(b) Posting of Agenda. At least one week before a regular meeting or disability hearing, the Board of Retirement or its designee shall post an agenda containing a brief general description of each item of business to be transacted or discussed. Any action item listed on the agenda that includes backup material must accompany the agenda or the item will be pulled. The agenda shall specify the time and location of the regular meeting or disability retirement hearing and shall be posted in a location that is freely accessible to members of the public. The agenda shall also be posted on ICERS' website at least five days prior to the meeting. No action shall be taken on any item not appearing on the posted agenda.

(c) Taking Action on Items Not on Agenda. Notwithstanding subdivision (b) of this section, the Board of Retirement may take action on items of business not appearing on the posted agenda under any of the following conditions:

1) Upon a determination by a majority vote of the Board of the Retirement that an emergency situation exists, as defined in Section 27, subdivision (d), of this chapter.

2) Upon a determination by a majority vote of the board members or, if less than two-thirds of the board members are present, a unanimous vote of those board members present, that the need to take action arose subsequent to the agenda being posted as specified in subdivision (b) of this section.

3) The item was posted pursuant to subdivision (b) of this section for a prior meeting of the Board of Retirement occurring not more than five (5) calendar days prior to the date action is taken on the item, and at the prior meeting the item was continued to the meeting at which action is being taken. (Gov. Code Sec. 54954.2).

Section 32 Communications and Requests.

Communications and requests to the Board of Retirement shall be made in writing and directed to the Board of Retirement in care of the Retirement Administrator. The substance of such requests and the action of the Board of Retirement shall be noted in the minutes of the Board of Retirement. The Board of Retirement shall not take any action on oral requests except as provided by Section 28 of this chapter. (Gov. Code Sec. 54954.2, 54954.3),

Section 33 Quorum.

(a) Quorum. Five members of the Board of Retirement shall constitute a quorum. No motions may be passed or business transacted without five affirmative votes. (Gov. Code Sec. 31525)

(b) Recusal. A trustee who is also the supervisor, manager or director of an applicant for disability retirement shall recuse himself/herself from voting on the matter. This shall not apply if the trustee is the Board of Supervisor member.

(c) Tie Vote. In the event of a tie vote on a disability retirement application, the disability application will be deemed denied.

Section 34 Rules of Order.

(a) The Chairman of the Board of Retirement shall:

 (1) preside over all meetings of the Board of Retirement; and

 (2) exercise such control over meetings as the Chairman deems reasonable and necessary.

(b) The Chairman of the Board of Retirement shall have a vote on all motions and questions. (Gov. Code Secs. 31525, 31526(a)).

(c) Except as otherwise provided herein, the rules contained in the current edition of "Robert's Rules of Order Newly Revised" shall govern the Board of Retirement in their proceedings.

Section 35 Recording of Meetings, Hearings and Proceedings; Minutes; Retention of Minutes and Tapes.

(a) Recording of Meetings, Hearings and Proceedings. The Retirement Administrator shall cause all meetings, hearings and proceedings of the Board of Retirement to be electronically audio recorded except for closed sessions and shall provide for the protection and permanent storage of each recording for future use as may be necessary and as provided by this section.

(b) Contents of Minutes. The Secretary of the Board of Retirement shall record the minutes in writing and present the minutes for approval by the Board of Retirement at its next regular meeting or as soon as is administratively feasible. All minutes shall include the following:

- (1) the time and place of each meeting of the Board of Retirement,
- (2) the names of members of the Board of Retirement present and not present,
- (3) all official acts of the Board of Retirement, and
- (4) the votes given by board members except when action is unanimous, and when requested, a board member's dissent or approval.

(c) Minutes as Part of Permanent Records. The minutes, or a true copy thereof, submitted by the secretary and signed by the Secretary and the Chairman, shall form a part of the permanent records of the Board of Retirement.

(1) Minutes. Hardcopies of minutes shall be retained 2 years from the date of their approval and then scanned into the appropriate media.

(2) Recordings. Recordings shall be retained for a minimum of 5 years, except the recordings related to disability retirement proceedings or any proceeding in which a decision of the Board of Retirement is appealed to or considered by a court of law. Such recordings shall be retained for a minimum of 5 years from the date of the final decision of the Board of Retirement on an application for disability retirement or 5 years from the final date of decision on such appeal or consideration, whichever is later. (Gov. Code Secs. 31525, 31526(a)).

Section 36 Right of Public to Address Board of Retirement.

(a) The Public Comments section appearing on every agenda for regular meetings of the Board of Retirement shall provide an opportunity for members of the public to directly address the Board of Retirement on items of interest to the public that are within the subject matter jurisdiction of the Board of Retirement, provided that no action shall be taken on any item not appearing on the agenda unless the action is otherwise authorized by Section 28, subdivisions (b) and (c), of this chapter. (Gov. Code Sec. 54954.3)

(b) Unless provided otherwise by a majority vote of the members of the Board of Retirement, each member of the public shall be allowed to speak three minutes on an item of interest to the public with a total time on any one item of fifteen minutes. (Gov. Code Secs. 31526(a), 54954.3)

Section 37 Adjournment of Meetings.

(a) The Board of Retirement may adjourn any regular, adjourned regular, special or adjourned special meeting to a time and place specified in the order of adjournment.

(b) Less than a quorum of the Board of Retirement may so adjourn from time to time.

(c) If all Board of Retirement members are absent from any regular adjourned regular meeting, the Chairman or Secretary of the Board of Retirement may declare the meeting adjourned to a stated time and place and shall cause a written notice of the adjournment to be given in the same manner as provided for special meetings, unless such notice is waived as provided for special meetings.

(d) A copy of the order or notice of adjournment shall be conspicuously posted on or near the door of the place where the regular, adjourned regular, special or adjourned special meeting was held within 24 hours after the time of the adjournment.

(e) When a regular or adjourned regular meeting is adjourned as provided in this section, the resulting adjourned regular meeting is a regular meeting for all purposes.

(f) When an order of adjournment of any meeting fails to state the hour at which the adjourned meeting is to be held, it shall be held at the hour specified for regular meetings by Section 27 of this chapter (Gov. Code Sec. 54955)

Section 38 Continuance of Meeting or Disability Retirement Hearing To Subsequent Meeting or Hearing.

Any hearing being held, or noticed or ordered to be held, by the Board of Retirement at any meeting may by order or notice of continuance be continued or recontinued to any subsequent meeting of the Board of Retirement in the same manner and to the same extent set forth in Section 34 of this chapter for the adjournment of meetings: provided, that if the hearing is continued to a time less than 24 hours after the time specified in the order or notice of hearing, a copy of the order or notice of continuance of hearing shall be posted immediately following the meeting at which the order or declaration of continuance was adopted or made. (Gov. Code Sec. 54955.1).

Section 39 Closed Sessions to Confer with County Counsel Regarding Litigation.

Closed sessions of the Board are governed exclusively by the provisions of the Ralph M. Brown Act (Gov. Code Sec. 54950, et seq.) and the amendments thereof.

Section 40 Agenda And Other Writings As Public Record.

(a) Agenda and Other Writings Are Public Records To Be Made Available To Public. Notwithstanding Government Code Section 6255 or any other provision of law, agendas of public meetings and other writings, when distributed to all, or a majority of all, of the members of the Board of Retirement by member, officer, employee, or agent of such body for discussion or consideration at a public meeting of the Board of Retirement, are public records under the California Public Records Act (Title 1, Division 7, Chapter 3.5, commencing with Sec. 6250 of the Government Code) as soon as distributed, and shall be made available pursuant to Section 6253. This section shall not include any writing exempt from public disclosure under Government Code Sections 6253.5, 6254 or 6254.7.

(b) Requirement to Make Public Records Available. Writings which are public records under subdivision (a) of this section and which are distributed during a public meeting of the Board of Retirement shall be made available for public inspection upon request prior to, during and after such meeting.

(c) Fee Allowed for Copies. A fee will not be charged for copies of the first twenty (20) pages requested. However, the Retirement Administrator shall charge and collect at the time a request is made, a fee of twenty-five cents (\$0.25) per page for additional copies requested. (Gov. Code Sec. 6253(b)) The writings described in this section are subject to the requirements of the California Public Records Act and shall not be construed to exempt from public inspection any record covered by that act, or to limit the public's right to inspect any record required to be disclosed by that act, or to limit the public's right to inspect any record required to be disclosed by that act.

CHAPTER 4

MEMBERSHIP

Section 41 Persons Eligible for Membership.

Except as otherwise provided by this chapter, persons eligible for membership in the Retirement System shall become members of the Imperial County Employees' Retirement System as follows:

- (a) for a person who is paid monthly or semi-monthly: upon the first day of the calendar month following entrance into Employer's service;
- (b) for a person who is paid bi-weekly: upon the first day of the first bi-weekly pay period following entrance into Employer's service. (Gov. Code Secs. 31551, 31552)

Section 42 Exclusion and Exemption from Membership: Determination of Safety Membership.

- (a) Exclusion/Exemption from Membership. Temporary, extra help, seasonal and intermittent employees are excluded from membership. All permanent full-time employees, limited term employees, substitute employees, or permanent part-time employees (designated three-quarter time, sixty (60) hours per pay period, or more) belong to the Imperial County Employees' Retirement System.
- (b) Safety Membership Determination. In cases of doubt as to whether a person is eligible to become a safety member, the Board of Retirement shall decide. (Gov. Code Sec. 31470.8)
- (c) Newly hired employees who have attained the age of 60 may waive membership in this Retirement System. (Government Code Secs. 31552, 31525)

CHAPTER 5

GENERAL OPERATING REGULATIONS

Section 43 Sworn Statements.

Every person who is or becomes a member of ICERS shall upon entry into the Retirement System, complete and properly execute a sworn statement showing the person's date of birth and such other information as is required by the Board of Retirement. (Gov. Code Sec. 31526(b). The person's date of birth given on the sworn statement (affidavit) will be the birth date used in calculating all retirement benefits.

Section 44 Retirement Certificates.

Upon retirement of a member of the Retirement System, the member shall be furnished with a Retirement Certificate signed by the County Treasurer/Tax Collector or Chairman of the Board of Retirement. The Retirement Certificate shall indicate the effective date of retirement, the member's retirement allowance, and the total contributions to the credit of the member at date of retirement. (Gov. Code Sec. 31526(c)).

Section 45 Other Forms.

The Board of Retirement and Retirement Administrator shall have authority without approval or adoption by the Board of Supervisors to generate, use and modify such forms as are required or necessary in the administration and operation of the Retirement System. (Gov. Code Sec. 31526(c)).

Section 46 Deductions of Member Contributions.

Deductions of member's contributions shall be made from either salary or wage warrants. (Gov. Code Sec. 31527(a)).

Section 47 Warrants, Checks or Electronic Funds Transfers:

All warrants, checks, or electronic funds transfers drawn on the retirement fund shall be signed or authorized by two employees as designated by the Board of Retirement. The employees so designated are the Retirement Administrator or the Assistant Retirement Administrator, and the Imperial County Auditor-Controller. This authorization shall be by a standing order to draw warrants and checks or make electronic funds transfers. Such order shall be good until revoked. A warrant, check, or electronic funds transfer is not valid until it is signed, numbered, and recorded by the Auditor-Controller. (Gov. Code Sec. 31590) Revised November 24,2009

Section 48 Deduction of Past-Due Contributions.

(a) Clerical Error. Where through clerical error a member's mandatory contributions are not deducted at the time and in the manner required by law and these Regulations, and where the total of such past-due contributions, at one time, would cause difficulty and unnecessary hardship to the member, the Retirement Administrator may apportion the deduction thereof over a period not to exceed two (2) years. (Gov. Code Sec. 31525).

(b) Military Service.

(1) Military Member Returning to Service; Election of Option. Notwithstanding Gov. Code Section 31649, any member who resigned, or obtained a leave of absence, to enter and did enter the armed forces of the United States on a voluntary or involuntary basis and returned to County service within one year after separation therefrom, under honorable conditions, shall receive credit for service and prior service for all or any part of his military service, if, before retirement from the County, he or she contributes what he or she would have paid to the fund based on his or her compensation earnable pursuant to Section 31461 at the time he or she resigned or received the leave of absence, together with regular interest thereon, and if, when he or she contributes, the military service is not a basis for present or future military retirement payment. (Gov. Code Sec. 31649.5; County Code Sec. 3.08.260)

(A) The total past due contributions for the entire period during which the member was out of Employer's service for military service shall be deducted from his next salary warrant; or

(B) Deductions of past due contributions for the entire period during which the member was out of Employer's service due to military service shall be so apportioned that the total deducted from each warrant shall be the current contribution plus a fixed percentage of the past due contributions provided, however, that such past due contributions are deducted over a period of 1 year or period of time equal to the length of service the past due contributions represents, not to exceed 5 years, and in no event shall the payroll deduction for past due contributions be less than five dollars (\$5.00) per pay period; or

(C) No further contributions be deducted from his compensation except contributions due because of current service. (Gov. Code Secs. 31525, 31649.5, 31650).

(2) Failure to Elect Causes Automatic Deduction of Past Due Deductions. Unless the returning member re-enters the service as a new member or files an election described by subdivision (b) (1) of this section, the Imperial County Auditor-Controller or other officer charged with the duty of drawing salary or wage warrants shall deduct past due contributions pursuant to subdivision (b) (1) (B) of this article. (Gov. Code Secs. 31649, 31650).

Section 49 Redeposit of Withdrawn Contributions.

(a) Definition of Regular Interest. "Regular Interest" shall mean that amount of interest which would have credited to the account of the member on the amount to be deposited at the interest rates established for the system if the contributions required by this section had been on deposit from the date of separation from the Retirement System until the amount required to be deposited has been paid.

(b) Redeposit. Any member may redeposit in the retirement fund, prior to filing an application for retirement, by lump sum payment or by installment payments of \$5.00 or more over a period of one year or period of time equal to the length of service the redeposit represents, not to exceed 5 years, an amount equal to all of the accumulated normal contributions which the member has withdrawn, plus regular interest thereon from the date of separation from the retirement system, and the member's membership is the same as if unbroken by such termination. Except as provided in Government Code Section 31652, the member's rate of contribution shall be based on age at the nearest birthday at time of re-entrance into the system. If the member does not re-deposit all of the accumulated normal contributions previously withdrawn, the member shall be considered as a new member without credit for any previous service. (Gov. Code Sec. 31527(b), 31652).

Section 50 Persons Brought Within Field of Membership.

(a) Brought Within Field of Membership. If any Employer's officer or employee not previously included within the field of membership of the Retirement System is brought within the field of membership, or if any elected Employer official chooses to come within the field of membership, the person shall not receive credit for service or for prior service unless either:

(1) The person elects to and does pay into the Retirement System within one year thereafter, or within such longer time as is provided in subdivision (b) of this section and before an application for retirement is filed, an amount equal to the contributions the person would have made if the person had been a member of the Retirement System from the date of its organization, or from the date of his entry into Employer's service, whichever is the later, together with regular interest thereon, as defined by Section 46(a), of this chapter (for this section only "total amount") or,

(2) The Board of Supervisors, by a four-fifths vote, provides that it shall make, on behalf of all such officers or employees eligible to receive credit for prior service under this section, all or a part of the contributions to the system that the officer or employee would be required to make for the person's prior service, except that the contributions made by the Employer pursuant to this section shall be available only for the purpose of retirement for service or for disability and a member resigning from county service shall be entitled to withdraw only that portion of the member's accumulated contributions made by the member.

(b) Extension of Time to Deposit. An Employer's officer or employee brought within the field of membership shall be allowed to deposit the total amount in a lump sum payment or in equal installment payments over a period of one year or a period of time equal to the length of service the total amount represents (rounded to the nearest full year), not to exceed five years. In no event shall the installment payments for this purpose be less than \$5.00 per pay period in addition to member's regular deduction. (Gov. Code Secs. 31527(c), 31648).

Section 51 Separation from Service.

(a) If the service of a member is discontinued other than by death or retirement, upon proper written application filed with ICERS, the member may:

(1) Be paid all of the member's accumulated contributions plus interest, minus a withdrawal charge described by subdivision (b) of this section. Accumulated contributions shall be paid at the end of the month following the month after the employee terminates from service.

(2) Choose deferred retirement, if eligible to do so.

(3) Choose to leave accumulated contributions with ICERS, pursuant to Gov. Code Sec. 31629.5.

(b) Withdrawal Charge. Except as to those members whose membership is terminated by reason of attaining compulsory retirement age, death, or forced reduction layoff as provided by County Code Section 3.40 et seq., when the member withdraws his or her accumulated contributions, there shall be deducted a withdrawal charge of \$25.00. This shall apply unless the interest credited to the member's account is less than the sum of \$25.00, in which case the withdrawal charge shall be the total amount of interest so credited. (Gov. Code Secs. 31527(d), 31628, 31629)

Section 52 Acceptance of Rollovers/Transfer Funds From Eligible IRS Plans.

To the extent authorized by both Federal and State law, ICERS shall accept rollover funds from qualified 457 and 403(b) plans for the payment of contributions for service credit as defined in the ICERS Benefit Booklet.

a) **Governing Document.** The rules of this system for accepting funds for purchase of service credit shall include the rules set out herein. These rules are available along with all other documents that govern the operation of the system.

(b) **Compliance with IRS Rules.** Nothing contained herein shall require the system to take any action that would jeopardize the tax-qualified status of the system.

(c) **Eligible Members.** All members of ICERS.

(d) **Time for Purchase/Redeposit.** System Members must make such purchase or redeposit while a member of ICERS but no later than 120 days after retirement.

(e) **Source of Funds for Purchase Redeposit (Section 641 and 647 of EGTRRA).** Any Eligible Member may purchase service credit or make a redeposit in accordance with the governing rules of the system by the purchase deadline. He or she must do so with funds that qualify for rollover or trust-to-trust transfer under Sections 641 or 647 of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA "). Therefore, an Eligible Member may purchase service credit or make a redeposit with funds that come from an eligible deferred compensation plan under Section 457(b) of the Internal Revenue Code ("Code") or from a tax deferred annuity plan under Section 403(b) of the Code.

(1) **Evidence of Source of Funds.** An Eligible Member shall provide to the system the written certification from the administrator of the 457 plan or the 403(b) plan, as applicable, that the plan meets the requirements for an eligible 457 plan or the requirements for a 403(b) plan under the Code, and the funds that are transferred are paid either as an eligible rollover distribution under Section 402(c) of the Code or as an eligible trustee to trustee transfer under the governing Sections of 457 or 403(b) of the Code. Transfers must meet all IRS rules for transfer.

Any funds paid or transferred to the system to purchase service credit shall be by check, made payable to ICERS "for the benefit of" the named member.

(f) Tax Limits.

(1) Section 415(b). Prior to accepting any funds for re-deposit or purchase of service credit under this regulation, the system shall evaluate whether Section 415(b) of the Code limits the amount of benefits that can be paid by the system to the member, and shall inform the member of the results and consequences thereof. If the employer has not established a replacement benefits plan under Section 415 (m) of the Code to pay the difference between the total benefits that can be earned by the member and the benefits that can be paid by this system, the system shall not accept any amount from the member that would provide benefits in excess of what can be provided under Section 415 (b).

(2) Section 415(n). Prior to accepting any funds for purchase of service credit under this regulation, the system shall evaluate whether Section 415(n) of the Code limits the amount of benefits that can be purchased under the system by the member and shall inform the member of the results and consequences thereof. The system shall not accept any funds to purchase service in excess of what is allowed under Section 415(n) of the Code.

(3) 10% Penalty Tax. Prior to accepting any funds under this regulation from a Section 457 plan, the system shall inform the member that, after receipt of such funds, the member could become subject to an extra 10% federal income tax penalty with respect to such funds.

(g) Interest on Payment by Member. The amount payable for redeposit or purchase of service under this regulation shall bear interest until the date of repayment as generally provided for under the system's rules for redeposit or purchase of service credit.

(h) Correction of Errors. The system's administrator shall have full authority to take whatever actions are necessary or appropriate to correct any errors in the administration of this Bylaw, including but not limited to, repayment of excess transfers or rollovers, or reduction of the amount of service credit purchased and collection of overpayments.

CHAPTER 6

INVESTMENT ADVISERS

Section 53 Definitions.

Unless the context or subject matter requires otherwise by this chapter, the following definitions shall apply in this chapter:

- (a) Calendar Year means January 1 through December 31.
- (b) Investment Adviser means an individual, partnership, corporation or other entity which provides investment advice to the Retirement System and Board of Retirement and manages assets of the Retirement System with authority to buy and sell securities and other types of investment instruments for the account of the Retirement System and to incur on behalf of the Retirement System charges, including broker commissions, relating to the buying and selling of such securities and investment instruments. An investment adviser is also known as a "money manager." At the discretion of the Board of Retirement the Treasurer may be appointed to act as a money manager who shall be exempt from complying with the provisions of Sections 53 and 54 of this chapter. (Gov. Code Secs. 31525, 31595, 31595.1).
- (c) Securities means investment instruments such as bonds, stocks and other instruments of indebtedness or equity. (Gov. Code Secs. 31525, 31595).

Section 54 Broker Commission Disclosure Requirements.

Investment advisor's written quarterly reports to the Board of Retirement are to include disclosure of the following:

- (a) total amount of broker commissions incurred by the investment advisor on behalf of the Retirement System during the most recent quarter and the present calendar year;
- (b) the average broker commission cost per share during the most recent quarter and the present calendar year; and
- (c) a summary for the most recent quarter and the present calendar year containing the name of each broker, the total amount of broker commissions charged by each broker, and the average broker commission cost per share charged by each broker. (Gov. Code Secs. 31525, 31595).

Section 55 Disclosure of SEC Form ADV, Part II.

At the time of execution of an investment advisor contract with the Board of Retirement and in the month of January of each year after becoming an investment advisor to the Board of Retirement, an investment advisor shall submit to the Board of Retirement a Securities and Exchange Commission Form ADV, Part II, as provided by 17 Code of Federal Regulations 275.204-3 or related provision. (Gov. Code Secs. 31525, 31595)

Section 56 Disclosure of In-House or Affiliated Brokers.

(a) Consent and Disclosure Prior to Use. Prior to using the services of an in-house broker or affiliate broker in the execution of any trade on behalf of the Board of Retirement and each year in January thereafter, an investment advisor shall obtain the written consent of the Board of Retirement to use such broker and at the time such consent is sought shall disclose in writing to the Board of Retirement the following:

- (1) the name of the in-house or affiliated broker;
- (2) the average broker commission charged on a cost per share basis by the in-house or affiliated broker for the previous 12 months;
- (3) the average broker commission charged on a cost per share basis by the broker industry for the previous 12 months; and
- (4) the advantages and disadvantages of using the in-house or affiliated broker in executing trades and obtaining best execution on behalf of the Board of Retirement. (Gov. Code Secs. 31525, 31595).

(b) Yearly Disclosure in January. During the month of January of each year an investment advisor shall disclose in writing to the Board of Retirement the following:

- (1) the name of each in-house and each affiliated broker of the investment advisor;
- (2) the total amount of broker commissions charged to the Retirement System or the Board of Retirement by each in-house broker and each affiliated broker of the investment advisor, and the average cost per share of such charges, for the previous calendar year; and
- (3) the advantages and disadvantages of using each in-house broker and each affiliated broker in executing trades and obtaining best execution on behalf of the Board of Retirement during the previous calendar year. (Gov. Code Secs. 31525, 31595).

CHAPTER 7

ADOPTION AND AMENDMENTS

Section 57 Repeal of Existing Bylaws and Regulations.

Except as provided in these bylaws and regulations, any and all previously enacted bylaws and regulations of the Retirement System are hereby repealed effective the date these bylaws and regulations are approved by the Board of Supervisors.

Section 58 Amendments.

These bylaws and regulations may be amended at any regular or special meeting of the Board of Retirement by five (5) affirmative votes of the Board of Retirement, subject to approval by the Board of Supervisors. Amendments shall become effective when approved by the Board of Supervisors. (Gov. Code Sec. 31525)

Section 59 Date of Approval of Bylaws and Regulations by Board of Retirement.

These bylaws and regulations are hereby adopted by the Imperial County Board of Retirement on the 21st day of April, 2005.

Section 60 Effective Date of Bylaws and Regulations.

These bylaws and regulations are hereby approved by the Imperial County Board of Supervisors and become effective the 21st day of June, 2005.