

Important Supplemental Retirement Benefit Reserve Update

Background

Under the standard provisions of the County Employees Retirement Law of 1937 (CERL), any excess earnings (earnings in excess of the Retirement Fund's actuarial assumption rate) that are realized by the primary pension fund for a county are controlled 100% by the Board of Retirement. In 1984, however, the Kern County Board of Retirement and Board of Supervisors adopted the alternative financial provisions of Article 5.5 of the CERL. The result was to put in place a statutory Supplemental Retirement Benefit Reserve (SRBR) formula. The statutory SRBR formula limits the authority of the Retirement Board over distribution of excess earnings, by mandating that any excess earnings be equally divided, with 50% of the total to the County to fund the County's retirement liability and the other 50% to the SRBR to fund current and future retiree loss of purchasing power due to the burdens created by annual inflation.

The SRBR currently provides various categories of supplemental retiree benefits:

- § Tier 1 – \$35.50 per month payable to retirees who were hired on or before July 1, 1994.
- § Tier 2 – Three additional monthly stipends payable to retirees:
 - a. \$1.372 per year of service for Members who retired prior to 1985. This was granted July 1, 1994.
 - b. \$5.470 per year of service for Members who retired prior to 1985. This was granted July 1, 1996.
 - c. \$10.276 per year of service for Members who retired prior to 1981. This was granted July 1, 1997.
- § Tier 3 – Additional benefits to maintain 80% purchasing power protection.
- § Death Benefit – A one-time payment of \$3,000 to a Member's beneficiary is made upon the death of the Member.
- § The Retirement Board has set aside a portion of the SRBR Reserve to help pay for an additional 0.5% COLA adopted under the Ventura Settlement

In the early 2000s the County was able to legally draw down more from the excess earnings for funding the County's 2% cost-of-living-adjustment reserve before the 50% sharing of benefits with SRBR. Before the 50% sharing, the formula also provides for the funding of a 1-3% Retirement Fund Contingency Reserve.

You need to understand the County provides benefits to employees and creates the liabilities for the Retirement Fund. The Retirement Board is charged by law to administer and ensure those benefits are paid. By setting employee contribution rates, employer contribution rates, and managing the investment program (paying for 70-75% of liabilities), the Retirement Board is the exclusive trust to pay the County benefit liability over the long-term.

Current Situation Facts – Contrary to the orchestrated media firestorm

On **February 10, 2010 Retirement Board Agenda**, the County Administration requested the Retirement Board join them in legislation to change the funding of SRBR for the County retirement reserves. The Retirement Board, in public, referred the matter to their Audit/Actuarial Committee for study and recommendation back to the Retirement Board.

Phil Franey
REOKC President

Late Friday afternoon of **February 12, 2010** and before a three day holiday, County employees and retirees were made aware of a **Board of Supervisor Consent Agenda** Item (considered to be routine and noncontroversial) for the afternoon of February 16, 2010 to approve proposed legislation with the Retirement Board to change the funding of SRBR.

February 16, 2010 afternoon the Board of Supervisors was asked to remove the SRBR Item from the consent agenda. Many retiree representatives, retirees, and others voiced their concerns about the manner the SRBR Item was placed on the agenda after a three-day holiday. The Board was told by members of the audience the significant threat to current and future benefits for active and retired members of the retirement system. The Board of Supervisors and County Administration were dumfounded why so many of their employees and retirees were upset that they were pushing this agenda item through **without the requested** Retirement Board consent, as a consent agenda item following a three-day holiday, and having draft legislation and letters to State Legislators already prepared. Does disingenuous come to mind or is it just the culture of the bureaucracy? Finally and after being reminded again in public session of the pending Retirement Board review, the Board of Supervisors decided to delay SRBR proposed legislation.

On **February 23, 2010** the Retirement Board Audit/Actuarial Committee (Committee) met in a public forum to discuss the County request to change SRBR funding. A few persistent committee members, audience members, and retirement counsel tried to present options for SRBR funding. They were repeatedly reminded by independent counsel and expert on SRBR, Michael Toumanoff (Mannatt, Phelps & Phillips, LLP), that the stream of funding for SRBR, as established under Article 5.5 when it was adopted in Kern County, is a vested right for current and future retirees. This right is protected by the constitution of the State of California and United States of America. The Committee was advised that any action to change SRBR would be unconstitutional and, therefore, illegal under both state and federal law. The **Audit/Actuarial Committee voted unanimously not to join the Board of Supervisors** in the effort to change SRBR by legislation and recommend the same to the Board of Retirement.

The Board of Retirement met in a public forum on **February 24, 2010** to discuss the request of the County to change the funding of SRBR. Another attempt was pursued by a few attendees to find any option to get away from the current funding framework for SRBR. Once again, they were repeatedly reminded by independent counsel and expert on SRBR, Michael Toumanoff (Mannatt, Phelps & Phillips, LLP), that the stream of funding for SRBR is a vested right for current and future retirees. These rights are protected by the constitution of the State of California and United States of America. Action to change the funding of SRBR would be considered a breach of contract and, as advised, unconstitutional. **The Retirement Board voted unanimously, with Supervisor Maggard abstaining, not to join the Board of Supervisors in the effort to change SRBR by legislation.** The Audit/Actuarial Committee was directed to further study SRBR benefits.

Remember - SRBR is the funding to assist you in offsetting your loss of purchasing power in your retirement years. Be alert because this will not be the last time the County tries to pick your retirement benefit pocket. The County still has the option of shopping for a favorable opinion to pursue SRBR legislation.

We thank the many who attended the meetings with their support and concerns.

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